

EXHIBIT 7

1 STUART G. GROSS (#251019)
sgross@grosskleinlaw.com
2 BENJAMIN H. KLEIN (#313922)
bklein@grosskleinlaw.com
3 **GROSS & KLEIN LLP**
4 The Embarcadero
Pier 9, Suite 100
5 San Francisco, CA 94111
t (415) 671-4628
6 f (415) 480-6688

7 *Attorneys for Plaintiffs*

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

13 SAN FRANCISCO HERRING
ASSOCIATION; and DAN CLARKE,

14 Plaintiffs,

15 vs.

16 PACIFIC GAS AND ELECTRIC COMPANY;
17 and PG&E CORPORATION

18 Defendants.

Case No. 14-cv-04393 WHO (JCS)

**REVISED CONSENT
DECREE BETWEEN THE PLAINTIFF SAN
FRANCISCO HERRING ASSOCIATION
AND DEFENDANTS**

GROSS & KLEIN LLP
THE EMBARCADERO
PIER 9, SUITE 100
SAN FRANCISCO, CA 94111

TABLE OF CONTENTS

1.	INTRODUCTION	1
2.	DEFINITIONS.....	5
3.	SUPPLEMENTAL ENVIRONMENTAL PROJECTS, OTHER MONETARY PAYMENTS, FEES AND COSTS.....	7
3.2.	Supplemental Environmental Projects – Creosote Removal and Eelgrass Restoration	7
3.3.	Environmental Mitigation - Herring Permit Retirement Program	8
3.3.1.	Proof of Permanent Permit Reduction	8
3.3.2.	Costs of Administration	9
3.3.3.	Contingent Allocation of Funds	9
3.4.	Other SFHA Payment	10
3.5.	Wire Instructions for Grosss & Klein	10
3.6.	Fees and Costs.....	11
3.6.1.	Reimbursement of Accrued Fees and Costs	11
3.6.2.	Compliance Monitoring Funds	11
4.	INVESTIGATIVE AND REMEDIAL ACTIONS TO BE TAKEN BY PG&E	13
4.1.	Result of Compromise	13
4.2.	Investigation, Monitoring, and Reporting in the Hundred-Foot (100') Band	13
4.2.1.	Soil Borings.....	13
4.2.2.	Groundwater Grab Samples	13
4.2.3.	Groundwater Monitoring Wells	13
4.2.4.	Groundwater Well Sampling Result Reporting	17
4.3.	Remediation in the 100' Band	18
4.3.1.	Groundwater Remedy Triggers.....	18
4.3.2.	Development and Proposal of Groundwater Remedial Action or NFA Request.....	18
4.3.3.	Implementation of Remedy.....	19

1	4.3.4. Post-Remediation Monitoring.....	21
2	4.3.5. Post-Remediation Reporting Obligations	21
3	4.3.6. No SFHA Right of Appeal.....	22
4	4.4. Offshore Investigation.....	23
5	4.4.1. Offshore Investigation – Bayward and Lateral Extent.....	23
6	4.4.2. Offshore Investigation-Vertical Extent.....	24
7	4.4.3. Offshore Investigation – Boring Locations.....	24
8	4.5. Offshore Investigation – Sampling Protocol and Methods.....	26
9	4.5.1. Pore Water Sampling Protocol.....	26
10	4.5.2. New Boring Sampling Methodology	27
11	4.6. Offshore Investigation – Sample Analyses	28
12	4.6.1. PAH Analysis of Pore Water and Bulk Sediment Cores	28
13	4.6.2. Supplemental Constituent Analysis of Bulk Sediment Cores.....	28
14	4.6.3. Non-Filtration of Pore Water Sample	29
15	4.6.4. Trigger Straddle	29
16	4.7. Offshore Investigation – Remedy Triggers and Areas.....	29
17	4.7.1. Offshore Areas Subject To Potential Remedy	29
18	4.7.2. Total Trigger PAHs in Pore Water Remedy Trigger	29
19	4.7.3. PWeq Remedy Trigger.....	29
20	4.7.4. MGP Contamination Identified Below Three Feet Below Sediment Surface	30
21	4.8. Offshore Remedy – Selection and Implementation	30
22	4.8.1. PG&E Remedy Proposal.....	30
23	4.8.2. Implementation of RAP	31
24	4.9. Offshore – Post Remediation Compliance Monitoring and Reporting.....	31
25	4.9.1. All Residue Removed Remedy	31
26	4.9.2. Engineered Cap Remedy.....	33
27	4.9.3. Other Engineered Solution Remedy	35
28		

1	4.9.4. Monitored Natural Recovery (MNR) Remedy	37
2	4.9.5. All Offshore Remedy Scenarios	39
3	4.10. West Harbor	39
4	4.10.1. No Right of Appeal to Panel	40
5	4.11. Force Majeure	40
6	4.11.2. Best Efforts to Gain Access, Permits, Consents and Approvals	40
7	5. APPEALS TO PANEL	41
8	5.1. Formation of Panel	42
9	5.2. No Ex Parte Communication	43
10	5.3. Appeal Process	43
11	5.3.1. Timing of Appeal	43
12	5.3.2. Notice of Appeal	43
13	5.3.3. Submittal of Digital Record	43
14	5.3.4. Briefing	44
15	5.3.5. Extension of Deadlines	44
16	5.3.6. Additional Document Submittals	45
17	5.3.7. De Novo Review	45
18	5.3.8. Scope of Panel Role	46
19	5.3.9. Written Determination by Panel	46
20	5.3.10. PG&E Work During Appeal	46
21	5.3.11. Post-Appeal Actions	47
22	5.3.12. PG&E Right of Appeal	47
23	5.3.13. Transmittal Definitions	47
24	5.3.14. Exclusive Remedy	48
25	5.3.15. Fees and Costs on Appeal	48
26	6. DISPUTE RESOLUTION	48
27	7. SUBMISSION OF CONSENT DECREE TO U.S. EPA/DOJ	49
28	8. DISMISSAL OF COMPLAINT	49

1	9.	BINDING EFFECT, CLAIMS COVERED AND RELEASED	49
2	9.1.	SFHA's Releases and Waivers	49
3	9.4.	PG&E's Release and Waiver.....	51
4	10.	NOTICES.....	52
5	11.	MISCELLANEOUS PROVISIONS.....	53
6	11.1.	Integration.	53
7	11.2.	Governing Law	53
8	11.3.	Effective Date	53
9	11.4.	Retention of Jurisdiction.	53
10	11.5.	Modification.....	53
11	11.6.	Construction	53
12	11.7.	Term of Consent Decree	54
13	11.8.	Severability	54
14	11.9.	Assignment.....	54
15	11.10.	Authority to Sign.....	54
16	11.11.	Counterparts/Signatures	54
17	11.12.	Attorney's Fees For Enforcement or Modification of Consent Decree	54
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

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1 **1. INTRODUCTION**

2 1.1. **The Parties.** This Consent Decree—inclusive of the Exhibits hereto, which are all
3 incorporated herein by reference—is entered into by and between plaintiff San Francisco Herring
4 Association ("SFHA"), on the one hand, and Pacific Gas and Electric Company and PG&E
5 Corporation (collectively, "PG&E"), on the other hand. SFHA and PG&E collectively are
6 referred to herein as the "Parties" and each of them as a "Party."

7 1.2. SFHA is a California non-profit, unincorporated association whose membership at
8 the time this lawsuit was filed was comprised of those members listed on SFHA's "Certificate of
9 Interested Entities or Persons," filed in this action on September 30, 2014 [Dkt. No. 5], and
10 currently is made up of San Francisco Bay commercial herring fishermen. SFHA was formed to
11 protect the San Francisco herring fishery, including without limitation the health and maintenance
12 of the herring stock on which the fishery depends, and to advocate, on behalf of its members,
13 activities related to herring fishing, including protection of the San Francisco Bay herring stock.

14 1.3. PG&E Corporation is a corporation organized and existing under the laws of the
15 State of California, with its principal place of business in San Francisco, California. Pacific Gas
16 and Electric Company is a corporation organized and existing under the laws of the State of
17 California, with its principal place of business in San Francisco, California, and is a subsidiary of
18 PG&E Corporation.

19 1.4. SFHA's co-plaintiff in this action, Daniel Clarke ("Clarke"), is not a party to this
20 Consent Decree and is not bound by its terms.

21 1.5. **General Allegations.** SFHA alleges that PG&E formerly owned and operated
22 three manufactured gas plants ("MGPs") in the present-day Marina and Fisherman's Wharf
23 neighborhoods of San Francisco, the North Beach MGP, the Fillmore MGP, and the Beach
24 Street MGP (the "Former MGPs") which manufactured gas used for lighting, heating, and
25 cooking purposes in the late nineteenth century and early 20th century.

26 1.6. The "Former North Beach MGP Site" is approximately 9.5 acres in size and is
27 located within the area bounded by Bay Street to the south, Webster Street to the west,
28 Buchanan Street and Laguna Street to the east, and the San Francisco Marina and North Point

1 Street to the north. The site is comprised of those parcels lying within the area designated by
 2 the City and County of San Francisco Office of the Assessor-Recorder as Block Numbers 0459,
 3 0460A, 0445A, 0463B, and 0900. The Former North Beach MGP Site is depicted on "Exhibit
 4 1".

5 1.7. The "Former Fillmore MGP Site" is approximately 9.1 acres in size. It is
 6 comprised of those parcels lying within the area designated by the City and County of San
 7 Francisco Office of the Assessor-Recorder as Block Nos. 0462A, 0463A, 0466A, 0467A, and
 8 0468A. The Former Fillmore MGP Site is depicted on "Exhibit 2".

9 1.8. The "Former Beach Street MGP Site" is approximately 0.3 acres in size and is
 10 bordered by Beach Street on the south, Mason Street on the west, and Powell Street on the east,
 11 and Jefferson Street (also called Lincoln Highway) on the north. It is identified as San Francisco
 12 Assessor's Parcel Number 0014-001. The Former Beach Street MGP Site is depicted on
 13 "Exhibit 3".

14 1.9. The Former North Beach MGP Site, the Former Fillmore MGP Site, and the
 15 Former Beach Street MGP Site are sometimes collectively referred to herein as the "Former
 16 MGP Sites." The term "Former MGP Sites" does not include within its meaning any site other
 17 than the Former North Beach MGP Site, the Former Fillmore MGP Site, and the Former Beach
 18 Street MGP Site. The term Former MGPs does not include within its meaning any facility other
 19 than the North Beach MGP, the Fillmore MGP, and the Beach Street MGP.

20 1.10. **Notice of Intent to Sue/Complaint.** On or about April 29, 2014, SFHA and
 21 Clarke served PG&E and state and federal regulatory enforcement agencies with a document
 22 entitled "Notice of Intent to Sue Under the Resource Conservation and Recovery Act ("RCRA")
 23 and the Clean Water Act ("CWA") (the "Notice"). The Notice alleged that the former MGP
 24 operations by PG&E violated RCRA, specifically, 42 U.S.C. § 6972(A)(1)(B), because PG&E's
 25 placement of MGP residues at and in the vicinity of the Former MGP Sites allegedly caused
 26 contamination of the soil, groundwater and surface water, which SFHA and Clarke alleged may
 27 present an imminent and substantial endangerment to health and/or the environment. In addition,
 28 the Notice alleged violations of the CWA (33 U.S.C. §§ 1311, 1342 and 1365) by PG&E for the

1 alleged discharge of MGP residues from the Former MGP Sites into the San Francisco Bay
2 without a permit. SFHA and Clarke indicated their intention to file a citizen suit under RCRA
3 and the CWA with regard to these alleged violations.

4 1.11. PG&E has denied and continues to deny these and all other material allegations
5 made by SFHA and Clarke in the Notice. No federal or state agency has commenced or is
6 diligently prosecuting a civil or criminal action in any court relating to the violations alleged in
7 the Notice. Nor has any state or federal agency ever informed PG&E that a permit is required
8 under RCRA or the CWA for any of the Former MGP Sites or for any MGP-related residues.

9 1.12. On September 30, 2014, SFHA and Clarke filed a complaint against PG&E
10 asserting the RCRA and CWA claims described in the Notice, and also for public nuisance,
11 private nuisance (Clarke), trespass (Clarke), negligence, strict liability, and declaratory relief
12 (SFHA).

13 1.13. Following the denial of PG&E's motion to dismiss the complaint, SFHA and
14 Clarke filed a first amended complaint on March 9, 2015, asserting the same causes of action as
15 alleged in the complaint (the "First Amended Complaint" or "FAC"). PG&E filed an answer to
16 the First Amended Complaint on March 30, 2015, in which it denied all material allegations of
17 the First Amended Complaint and asserted numerous affirmative defenses.

18 1.14. **Mediated Investigation Agreement.** On October 1, 2015, SFHA, Clarke, and
19 PG&E entered into a Mediated Investigation Agreement ("MIA") for the purpose of determining
20 the nature and extent of MGP residue in the "Investigation Area," as defined in the MIA. The
21 MIA was subsequently amended six times by the parties to it through five addenda and
22 statements on the record. The MIA, as amended and inclusive of its addenda, is referred to
23 herein as the "MIA". The MIA expired by its terms on December 1, 2017, and is of no further
24 force or effect.

25 1.15. **MIA Investigations.** PG&E worked jointly with SFHA and Clarke under the
26 MIA to develop and implement work plans for soil and groundwater investigations on and
27 around the Former MGP Sites under the oversight of the Regional Water Quality Control Board
28

1 – San Francisco Region ("Regional Board") and the State of California Department of Toxic
 2 Substances Control ("DTSC").

3 1.16. **Additional PG&E Investigations and Remediations.** PG&E has also conducted
 4 and is conducting other soil, soil gas, groundwater, and offshore sediment investigations and
 5 certain remedial activities on or around the Former MGP Sites, and in and along San Francisco
 6 Bay, including those areas adjacent to the Former North Beach MGP Site and the Former Beach
 7 Street MGP Site, pursuant to Voluntary Cleanup Agreements ("VCAs") entered into with DTSC
 8 for each of the Former MGP Sites, and pursuant to investigative orders concerning offshore
 9 sediment issued by the Regional Board to PG&E and the City and County of San Francisco
 10 ("CCSF") in 2017.

11 1.17. **Jurisdiction and Venue.** For purposes of this Consent Decree only, the Parties
 12 stipulate that this Court has jurisdiction over PG&E as to the allegations contained in the First
 13 Amended Complaint, that venue is proper in the Northern District of California, and that this
 14 Court has jurisdiction to approve, enter, and enforce this Consent Decree as a full and final
 15 binding resolution of all claims that were or could have been asserted by SFHA in the Notice
 16 and the First Amended Complaint based on the facts or conduct alleged therein.

17 1.18. **No Admissions.** SFHA and PG&E enter into this Consent Decree as a negotiated
 18 resolution of disputed claims. PG&E denies all material allegations contained in the Notice and
 19 the First Amended Complaint. SFHA denies the adequacy and merit of any defense raised by
 20 PG&E to such material allegations. This Consent Decree and any payments made or actions
 21 taken pursuant to this Consent Decree do not constitute, nor shall they be construed as, an
 22 adjudication, or an admission by PG&E, of any fact, finding, issue of law, conclusion of law, or
 23 violation of law, or of any liability, wrongdoing, responsibility, or tortious or illegal conduct
 24 whatsoever, such being specifically disputed and denied by PG&E. Except as expressly
 25 provided in this Consent Decree, nothing in this Consent Decree shall prejudice, waive or impair
 26 any right, remedy, argument or defense the Parties may have in any administrative or judicial
 27 proceeding, except all Parties waive any rights of appeal with respect to this Consent Decree and
 28 as otherwise set forth herein. This Consent Decree, its terms and provisions, as well as any

discussions or other communications relating to this Consent Decree, past, present, or future, shall not be offered or received in evidence in any action or proceeding, whether legal, equitable or administrative, or utilized in any other manner whatsoever, as an admission or concession of liability, wrongdoing, responsibility or tortious or illegal conduct on the part of PG&E.

1.19. This Consent Decree reflects a full, fair and reasonable resolution of SFHA's claims against PG&E raised in this lawsuit and the matters addressed by this Consent Decree.

2. DEFINITIONS. In addition to definitions defined within the body of this Consent Decree, the following definitions apply.

2.1. **Approved RAP.** The term "Approved RAP" shall mean a remedial action plan ("RAP") that has been: (a) approved by the Regional Board or the State Water Resources Control Board (the "State Water Board," collectively with the Regional Board, the "Board"); (b) approved by any other regulatory agency with jurisdiction; and (c) upheld by the Panel after an appeal, if any, by SFHA under Section 5.

2.2. **Chemical Performance Standard.** The term "Chemical Performance Standard" shall mean 15 µg/L Total Trigger PAHs in pore water.

2.3. **Chemical Performance Standard Testing.** The term "Chemical Performance Standard Testing" shall mean the sampling of pore water and analyzing it to determine whether the Chemical Performance Standard has been exceeded, in accordance with "**Exhibit 12**" and Section 4.5.

2.4. **Compliance Wells.** The term "Compliance Wells" shall have the meaning given in Section 4.2.3.1.

2.5. **Effective Date.** The term "Effective Date" shall have the meaning given in Section 11.3.

2.6. **"Final" as to Board Approvals and Determinations.** The term "final," when referring to Regional Board or State Water Board approvals or determinations, shall have the meaning given in Section 4.3.5.1.

2.7. **First Amended Complaint or FAC.** The term "First Amended Complaint" or "FAC" shall have the meaning given in Section 1.13.

1 2.8. **GW PAHs.** The term "GW PAHs" shall mean the PAHs that are included in the
2 forty (40) chemical semivolatile suite currently utilized in PG&E's groundwater program in San
3 Francisco.

4 2.9. **Hundred-Foot Band.** The term "Hundred-Foot Band" ("100' Band") means the
5 area extending inland for one hundred (100) feet from the mean high tide line of San Francisco
6 Bay.

7 2.10. **Mediated Investigation Agreement or MIA.** The term "Mediated Investigation
8 Agreement" or "MIA" shall have the meaning given in Section 1.14.

9 2.11. **NAPL.** The term "NAPL" shall mean non-aqueous phase liquid hydrocarbons.

10 2.12. **Notice.** The term "Notice" shall have the meaning given in Section 1.10.

11 2.13. **Panel.** The term "Panel" shall have the meaning given in Section 5.

12 2.14. **Sediment/Pore Water PAHs.** The term "Sediment/Pore Water PAHs" shall have
13 the meaning given in Section 4.6.1, as identified in "**Exhibit 14**".

14 2.15. **Supporting Documents.** The term "Supporting Documents" shall have the
15 meaning given in Section 5.3.4.1.

16 2.16. **Term.** The term "Term" shall have the meaning given in Section 11.7.

17 2.17. **Total Trigger PAHs.** The term "Total Trigger PAHs" shall mean the U.S.
18 Environmental Protection Agency ("U.S. EPA") list of 34 alkyl and parent polycyclic aromatic
19 hydrocarbon ("PAH") compounds on U.S. EPA's PAH-34 list, as shown on "**Exhibit 4**".

20 2.18. **Upset Event.** The term "Upset Event" shall mean any of the following: (a) a
21 publicly-reported storm exceeding the design storm (i.e., greater than a 100-year storm); (b) a
22 seismic event with a magnitude greater than 5.0 within 50 kilometers (km) of the location of the
23 respective remedy site, greater than 6.0 within 100 km of the location of the respective remedy
24 site, or greater than 7.0 within 500 km of the location of the respective remedy site; or (c)
25 publicly-reported sand boils occurring within the Marina or Fisherman's Wharf neighborhoods,
26 as shown on the map attached hereto as "**Exhibit 15**".

1 **3. SUPPLEMENTAL ENVIRONMENTAL PROJECTS, OTHER MONETARY**
2 **PAYMENTS, FEES AND COSTS**

3 3.1. PG&E shall make the following payments as part of the consideration in
4 exchange for the full and final compromise of all claims by SFHA against PG&E for alleged
5 violations of the CWA and RCRA, and for SFHA's claims under California state statutory and
6 common laws for damages and injunctive relief, as set forth in the Notice and FAC, and in
7 consideration for the releases and covenants not to sue as set forth below:

8 3.2. **Supplemental Environmental Projects – Creosote Removal and Eelgrass**
9 **Restoration.** Within ninety (90) days of the Effective Date of this Consent Decree, PG&E shall
10 make the following payments for the following supplemental environmental projects ("SEPs"),
11 which are intended for the purpose of restoring and enhancing the quality of the waters and
12 subtidal ecosystem in San Francisco Bay, which will serve to enhance the San Francisco Bay
13 herring fishery:

14 3.2.1. PG&E shall pay a total of One Million Two Hundred Thousand Dollars
15 (\$1.2 million) to the State of California Coastal Conservancy (the "Conservancy"), a state
16 agency whose stated purpose is to preserve, protect, and restore the resources of the California
17 coast, ocean, and the San Francisco Bay Area, with instructions to allocate those funds for the
18 Terminal Four Wharf Creosote Removal Project of the San Francisco Bay Creosote Removal
19 and Pacific Herring Habitat Restoration Project. Said payment shall be made by check payable
20 to the California State Coastal Conservancy, 1515 Clay Street, 10th Floor, Oakland, CA, 94612,
21 with notice to SFHA.

22 3.2.2. PG&E shall pay a total of One Million Two Hundred Thousand Dollars
23 (\$1.2 million) to the Estuary & Ocean Science Center (the "Center") with instructions to allocate
24 those funds for work to be conducted on eelgrass restoration projects in the San Francisco Bay
25 as follows: (a) Six Hundred Thousand Dollars (\$600,000) for a project to determine the best
26 path forward to restoring eelgrass "crop circles" in Richardson Bay, Sausalito, California, which
27 will involve both assessment of restoration potential and active planting of eel grass in the area;
28

1 and (b) Six Hundred Thousand Dollars (\$600,000) for a two-part study to determine sources of
 2 eelgrass transplant material and to investigate the utilization of grazer species that enhance
 3 eelgrass growth in San Francisco Bay. Said payment shall be made by check payable to Estuary
 4 & Ocean Science Center, 3150 Paradise Drive, Tiburon, CA, 94920, with notice to SFHA. At
 5 the time of making its payment, PG&E shall notify the Center that the Center is to provide
 6 PG&E and SFHA with annual progress reports on the status of the respective projects, for each
 7 of the three years during which the projects are to be implemented with these SEP funds.

8 **3.3. Environmental Mitigation - Herring Permit Retirement Program.** Subject to
 9 Sections 3.3.1 and 3.3.3, PG&E shall pay according to the instructions below the total sum of
 10 One Million Eight Hundred Thousand Dollars (\$1.8 Million) for the sole and exclusive purpose
 11 of providing compensation for the permanent retirement of existing commercial herring gill net
 12 permits issued by the California Department of Fish and Wildlife ("Herring Permits") in order to
 13 benefit the restoration and improvement of the herring fishery in California (the "Permit
 14 Retirement Payment"). PG&E and SFHA agree to cause the permanent retirement of a minimum
 15 of forty (40) Herring Permits, with a goal of permanently retiring eighty (80) such permits,
 16 within four (4) years of the Effective Date of this Consent Decree (the "Herring Permit
 17 Retirement Program" or "HPRP"). SFHA further agrees that it shall provide to PG&E
 18 confirmation and evidence of its progress in permanently retiring the Herring Permits on an
 19 annual basis.

20 **3.3.1. Proof of Permanent Permit Reduction.** PG&E's payment under Section 3.3
 21 shall not be due and payable unless and until PG&E receives from SFHA either of the following,
 22 either of which shall constitute "Proof of Permanent Permit Reduction": (a) written confirmation
 23 from the Department of Fish and Wildlife that the number of available Herring Permits will be
 24 permanently reduced by the number of Herring Permits to be retired in accordance with Section
 25 3.3 together with evidence of at least forty (40) contracts between SFHA and individual Herring
 26 Permit holders (the "HPRP Contract") under which the Herring Permit holder agrees, in
 27 consideration for the payment received under the HPRP and conditioned upon his or her receipt
 28 of such payment, that he or she shall not renew his or her retired Herring Permit or apply at any

time in the future for a replacement for his or her retired Herring Permit, and includes language that the Herring Permit holder waives and releases PG&E from claims, demands, damages, and liabilities in the same manner and to the same extent as the release and waiver agreed to by SFHA in Section 9 (except without reference to the MIA) (the "HPRP Contract Release"); or (b) alternative legally sufficient proof demonstrating that the total number of Herring Permits available has been reduced by at least forty (40) from the number of Herring Permits outstanding as of the Effective Date and that at least forty (40) participating Herring Permit holders have entered into an HPRP Contract including the HPRP Contract Release. For purposes of this Section 3.3.1, "alternative legally sufficient proof" shall include, without limitation, an adopted regulation permanently reducing the total number of available Herring Permits together with evidence of the HPRP Contracts, including the HPRP Contract Release. PG&E shall only be referenced in the HPRP Contract in the HPRP Contract Release. SFHA shall be obligated to enforce the HPRP Contracts, with the exception of the HPRP Contract Release, which PG&E shall be entitled to enforce as an express third party beneficiary of the HPRP Contract.

3.3.1.1. Within ninety (90) days following PG&E's receipt of the Proof of Permanent Permit Reduction, PG&E shall make the Permit Retirement Payment in accordance with the wire instructions in Section 3.5; provided, however, that in the event the ninety-day period expires less than sixty (60) days before the end of any calendar year, then PG&E shall not make the Permit Retirement Payment in said calendar year and the due date for said payment shall instead automatically be extended to January 30th of the following calendar year and shall be paid by PG&E in January of said year.

3.3.2. Costs of HPRP Compliance. SFHA shall be solely responsible for the costs of ensuring compliance with the HPRP, which shall be paid for from the Permit Retirement Payment. Such compliance costs must be reasonable and may not exceed Sixty Thousand Dollars (\$60,000).

3.3.3. Contingent Allocation of Funds. In the event SFHA believes it will be unable to or otherwise fails to provide PG&E with the required Proof of Permanent Permit Reduction within four (4) years of the Effective Date, then SFHA shall notify PG&E within

thirty (30) days of its knowledge of its inability to satisfy its obligations under Section 3.3. Within ninety (90) days following PG&E's receipt of the foregoing notice, and in lieu of the payment otherwise required under Section 3.3, PG&E shall make payment of Nine Hundred Thousand Dollars (\$900,000) ("Reduced Permit Retirement Payment") in accordance with the wire instructions in Section 3.5; provided, however, that in the event the ninety-day period expires less than sixty (60) days before the end of any calendar year, then PG&E shall not make the Reduced Permit Retirement Payment in said calendar year and the due date for said payment shall instead automatically be extended to January 30th of the following calendar year and shall be paid by PG&E in January of said year.

3.4. **Other SFHA Payment.** Within ninety (90) days of the Effective Date of this Consent Decree, PG&E shall pay the sum of Three Hundred Thousand Dollars (\$300,000) (the "Other SFHA Payment") to SFHA in accordance with the wire instructions in Section 3.5 to resolve SFHA's state-law claims; provided, however, that in the event the ninety-day period expires less than fifteen (15) days before the end of any calendar year, then PG&E shall not make the Other SFHA Payment in said calendar year and the due date for said payment shall instead automatically be extended to January 30th of the following calendar year and shall be paid by PG&E to SFHA in January of said year. PG&E shall have no responsibility or liability for the ultimate transmittal to or distribution or allocation of the funds PG&E has paid to SFHA, which responsibility shall be solely borne by SFHA.

3.5. **Wire Instructions for Gross & Klein:** The following, in combination with the complete account number which shall be provided by SFHA to PG&E, constitute the wire instructions for Gross & Klein.

- ☐ Account Name: Gross & Klein LLP
- ☐ Last Four Digits of Account Number: x3474
- ☐ Bank: Citibank, 245 Market St., San Francisco, CA 94111
- ☐ Domestic Routing Number: 321171184
- ☐ International Swift Code: CITIUS33

1
2 **3.6. Fees and Costs.**

3 3.6.1. Reimbursement of Accrued Fees and Costs. PG&E shall reimburse SFHA
4 its reasonable attorneys' fees and costs, including expert consultant costs, incurred from and after
5 December 1, 2017, through the execution of this Consent Decree for the court-supervised and
6 out-of-court settlement negotiations and related work, leading up to and including preparation of
7 this Consent Decree, which would be compensable under the standard established by § 505 of
8 the Clean Water Act, 33 U.S.C. § 1365(d), and applicable case law interpreting that standard.
9 SFHA shall provide to PG&E the invoices for which reimbursement is sought. SFHA and its
10 counsel, by approving this Consent Decree as to its form, each agree and acknowledge that such
11 payment shall constitute full and final payment of all attorneys' fees, expert/consultant fees, and
12 costs for services rendered by Gross & Klein, EnviroAssets, and all other attorneys and
13 consultants, during said timeframe, and neither SFHA nor its counsel or consultants shall be
14 entitled to seek any additional fees or costs from PG&E relating to said work. In the event that
15 an agreement is reached as to some or all of the reasonable fees and costs to be reimbursed to
16 SFHA under this Section 3.6.1, PG&E shall make such payment within sixty (60) days of the
17 date of that agreement, using wire instructions in Section 3.5. In the event the Parties are unable
18 to reach agreement as to some or all of the fees and costs for which SFHA seeks to be
19 reimbursed under this Section 3.6.1, then SFHA may submit the matter to the Court for
20 resolution upon a properly noticed motion.

21 3.6.2. Compliance Monitoring Funds. Within ninety (90) days of the Effective
22 Date of this Consent Decree, PG&E shall pay the total sum of Four Hundred Thousand Dollars
23 (\$400,000), using wire instructions in Section 3.6.2.3, into the SF Herring Monitoring Qualified
24 Settlement Fund (the "QSF"), established by or on behalf of SFHA, as the full and final payment
25 of attorneys' fees and costs, including expert costs, associated with SFHA's monitoring of
26 PG&E's compliance with this Consent Decree from the Effective Date through the termination
27 of this Consent Decree under Section 11.7. SFHA warrants and represents to PG&E that the
28

1 QSF is a duly constructed and authorized IRC Section 468B Qualified Settlement Fund, as
 2 defined by Internal Revenue Code Section 468-B and the associated Treasury Reg. 1-468B-1 of
 3 the Internal Revenue Code and is qualified to receive this settlement payment.

4 3.6.2.1. SFHA shall defend and indemnify PG&E, and hold PG&E
 5 harmless, with respect to any claims, demands, causes of action, rights, suits, obligations, debts,
 6 liabilities, damages, penalties, taxes, charges, losses, costs, expenses, attorneys' fees, expert
 7 fees, of any nature whatsoever, relating to or arising from the formation, administration, or
 8 existence of the QSF or the payment by PG&E into the QSF. Notwithstanding Section 11.7,
 9 SFHA's obligations under this Section 3.6.2.1 shall survive the termination of this Consent
 10 Decree.

11 3.6.2.2. Except as specifically provided under Section 3.6 and subject
 12 to Section 5.3.15.2, neither SFHA nor its counsel or consultants are entitled to, nor shall they,
 13 seek any additional funds from PG&E for any Compliance Monitoring for work performed by
 14 PG&E under this Consent Decree. "Compliance Monitoring," as used in this Section 3.6.2 and in
 15 Section 5.3.15.2 shall include, without limitation, review and analysis of (a) technical data; (b)
 16 monitoring reports; (c) Remedial Action Completion Reports ("RACRs"); (d) remedial action
 17 plans ("RAPs") and related Regional Board responses; (e) requests for "no further action"
 18 determinations and related Regional Board responses; and (f) review of Notices of Force
 19 Majeure, as described Section 4.11.3.

20 3.6.2.3. Wire Instructions for QSF: The following, in combination with
 21 the complete account number which shall be provided by SFHA to PG&E, constitute the wire
 22 instructions for the QSF.

- 23 ☐ Account Name: EPTC Custodial Trust Settlement Trust
- 24 Contribution Account
- 25 ☐ Account Number: x8544
- 26 ☐ Bank: Union First Market Bank
- 27 ☐ Domestic Routing Number: 051403164
- 28

□ Further Credit Instructions: EPTC FBO – SF Herring Monitoring
Qualified Settlement Fund

4. INVESTIGATIVE AND REMEDIAL ACTIONS TO BE TAKEN BY PG&E

4.1. **Result of Compromise.** The actions to be taken by PG&E under this Consent Decree are solely the result of a compromise of this dispute. Consequently, none of the agreements reached herein, or activities contemplated to be undertaken by PG&E pursuant to this Consent Decree, are intended to, nor shall they, have any precedential effect, including, without limitation, with respect to any other soil, soil gas, groundwater, surface water, or sediment investigations and/or remedial actions being undertaken or to be undertaken by or on behalf of PG&E in San Francisco Bay or elsewhere.

4.2. **Investigation, Monitoring, and Reporting in the Hundred-Foot (100') Band.** PG&E shall undertake the work as set forth in this Section 4.2 within the 100' Band.

4.2.1. **Soil Borings.** Based upon understandings reached in negotiating this Consent Decree, PG&E already has taken soil borings in the area from Pier 35 to Jones Street, identified as "UB-01" through "UB-09" on **Exhibit 5**. Said locations formed the basis for the locations for the groundwater grab sampling to be conducted by PG&E under Section 4.2.2.

4.2.2. **Groundwater Grab Samples.** A "groundwater grab" is a single groundwater sample representative of a specific location and depth at a given point in time. PG&E shall complete four additional groundwater grabs at the locations shown on **Exhibit 5** and with sample depth intervals specified in "**Exhibit 17**".

4.2.3. **Groundwater Monitoring Wells.** PG&E shall undertake the following groundwater sampling in designated existing wells and new groundwater monitoring wells to be installed pursuant to this Consent Decree:

4.2.3.1. **Groundwater Monitoring Well Locations.** PG&E shall undertake groundwater sampling in the groundwater monitoring wells that are located, or will be located, in the locations within the 100' Band, which are identified and described on the maps attached hereto as "**Exhibit 6**" and "**Exhibit 7**" and the table attached hereto as **Exhibit 17** (each

1 well, individually referenced as a "Compliance Well" and, if referencing more than one,
2 "Compliance Wells") and which shall be constructed per Sections 4.2.3.2 and 4.2.3.3 and
3 located as close to the Bay as technically feasible.

4 4.2.3.1.1. In the event sediment pore water sampling in the
5 agreed-upon location(s) adjacent to Fort Mason shown on "**Exhibit 8**" show(s) Total Trigger
6 PAHs consistent with MGP residue that exceed 15 µg/L in pore water, then and only then PG&E
7 shall advance one or more exploratory soil borings in the upland area adjacent to the offshore
8 sampling point(s) with such exceedance. The depth of the boring(s) will extend down to the
9 elevation corresponding with the offshore exceedance or deeper. Soil samples will be analyzed
10 for constituents specified in Section 4.2.3.4. Grab groundwater samples will be collected
11 adjacent to each boring with sample depth intervals selected in accordance with the protocol
12 described in Section 4.2.3.2 and 4.2.3.3. If soil samples indicate the presence of MGP residue in
13 one or more soil samples in the upland area at Fort Mason, and grab groundwater samples
14 exceed 105 µg/L of the Total Trigger PAHs at the adjacent grab groundwater location, PG&E
15 shall install a groundwater monitoring well at the location of the grab groundwater sample(s)
16 with such exceedance in accordance with the 100' Band monitoring well protocol described in
17 Sections 4.2.3.2 and 4.2.3.3.

18 4.2.3.1.2. In the event that grab groundwater samples exceed
19 105 µg/L of the Total Trigger PAHs at any of the grab groundwater locations identified on
20 "**Exhibit 5**", then, and only then, PG&E shall install groundwater monitoring wells at the
21 location of the grab groundwater sample(s) with such exceedance in accordance with the 100'
22 Band monitoring well protocol described in Sections 4.2.3.2 and 4.2.3.3.

23 4.2.3.1.3. Notwithstanding the foregoing, installation of the
24 groundwater monitoring wells in the locations provided for in this Section 4.2.3 is subject to
25 PG&E's ability to gain access from the property owner, with use of best efforts, for such
26 installations. In the event such access is not granted, the groundwater monitoring well(s) will be
27 installed at the nearest accessible location. Except as expressly provided for in this Section 4.2.3,
28

1 no other additional groundwater monitoring wells are required to be installed or sampled by
2 PG&E within the 100' Band under this Consent Decree.

3 4.2.3.2. Screening Depths/Intervals. PG&E shall construct each
4 groundwater monitoring well or well cluster with the following screened intervals: (a) the first
5 encountered groundwater; (b) beneath the first encountered fine-grained interval that is ten (10)
6 inches or greater in thickness and below the interval screened to target first encountered
7 groundwater, with a maximum targeted well depth between twenty-five (25) feet and thirty (30)
8 feet below ground surface ("bgs"); provided, however, in the event no such fine-grained interval
9 is encountered shallower than forty (40) feet bgs, a ten (10) foot screen shall be placed from
10 thirty (30) feet to forty (40) feet bgs, unless a continuous fine grained interval consistent with
11 native Bay Mud (i.e. not post-development sediments) is encountered more shallowly than forty
12 (40) feet bgs that extends to forty (40) feet bgs, in which case a five-foot screened interval shall
13 be installed immediately above said interval which shall complete the monitoring well; (c) at
14 any other depths adjacent to identified NAPL, downgradient of NAPL near shore, or, if there is
15 no room downgradient of NAPL, then within the NAPL. Other than as indicated above, screen
16 intervals will be five (5) feet in length, unless a different length is needed to achieve any of the
17 above criteria.

18 4.2.3.3. Well configuration. Wells will not be configured or maintained
19 in a way that omits the collection of NAPL and/or MGP tar-impacted intervals.

20 4.2.3.4. Constituents To Be Sampled. PG&E shall sample and analyze
21 groundwater in wells within the 100' Band, as shown on **Exhibit 6** and **Exhibit 7**, for GW PAHs
22 and total extractable petroleum hydrocarbons ("TEPH"), but no other constituents.
23 Notwithstanding the foregoing, neither Total GW PAHs nor TEPH, alone or in combination,
24 shall be used as the trigger for any groundwater remedy. Instead, only the Total Trigger PAHs
25 shall be used to determine whether a groundwater remedy is triggered under this Consent
26 Decree.

27 4.2.3.5. Calculation of Total Trigger PAHs. Total Trigger PAHs shall
28 be calculated using the concentrations as shown in validated laboratory analytical results, or

laboratory-provided results where data validation is not conducted (the "Laboratory Results") and in accordance with the following:

4.2.3.5.1. Laboratory Non-Detects. In the event Laboratory Results report non-detections ("ND") for any of the Total Trigger PAHs, Total Trigger PAHs shall be calculated by substituting one-half the reporting limit for each individual Total Trigger PAH concentration reported as non-detect at the laboratory reporting limit.

4.2.3.5.2. "J" Qualified Positive Detections. Where "J" qualified positive detections are provided in the Laboratory Results, those "J" qualified results will be considered positive detections for the purpose of calculating Total Trigger PAHs. "J" qualified positive detections," as used in this Section 4.2.3.5.2, means that the particular PAH concentration is reported as an estimate.

4.2.3.5.3. Neat Analysis. Samples utilized for Total PAH Trigger evaluation shall be submitted for undiluted (or "Neat") analysis. In the unlikely situation where the laboratory is unable to provide undiluted reporting limits or "RLs" (i.e., no Neat sample), and the RLs cause the trigger exceedance, the well will be resampled as soon as reasonably achievable at a similar tidal stage, submitted for undiluted (Neat) analysis, and those results will replace the original results for evaluating whether the remediation trigger has been exceeded. In this circumstance, concurrent with its transmittal of the quarterly groundwater monitoring report that includes such sampling event, as set forth in Section 4.2.4, PG&E will provide to SFHA the correspondence from the laboratory explaining why the undiluted sample results cannot be provided.

4.2.3.5.4. Trigger Straddle. Where the concentrations of primary and duplicate samples straddle a trigger level and field duplicate relative percent difference ("RPD") goals are met (with goals defined as within 25% for Total Trigger PAHs rather than individual chemicals), the arithmetic mean concentration of Total Trigger PAHs of the two (2) samples shall be determined for trigger evaluation under Section 4.3.1. Where duplicate goals fail, the affected well shall be resampled as soon as reasonably achievable at a

1 similar tidal stage that the failed duplicates were collected and the resampled results will be used
2 for trigger evaluation under Section 4.3.1.

3 4.2.3.6. Sampling Frequency. PG&E shall take a single sample per
4 Compliance Well each quarter, such that in a given year the full tidal cycle is represented. This
5 will be accomplished by sampling each Compliance Well within a four-quartile range of high to
6 low tide. This sampling shall be conducted by PG&E according to the following schedules
7 applicable to the Pre-Remediation Phase, the Remediation Phase, and the Post-Remediation
8 Phase, respectively and as applicable:

9 4.2.3.6.1. Pre-Remediation Phase. At the initiation of the
10 investigation following entry of this Consent Decree (the "Pre-Remediation Phase"), PG&E
11 shall sample Compliance Wells quarterly for eight quarters. If, following the first eight (8)
12 quarters of groundwater monitoring in a Compliance Well during the Pre-Remediation phase
13 there is no exceedance of the remediation trigger set forth in Section 4.3.1, then no further
14 monitoring of such Compliance Well(s) is required and PG&E shall be entitled to seek a no
15 further action ("No Further Action" or "NFA") determination from the Regional Board, and/or
16 any other governmental agency with jurisdiction, and shall be entitled to close and
17 decommission any Compliance Wells that are the subject of an approved NFA.
18 Notwithstanding anything to the contrary in Section 5, SFHA shall have no right of appeal to the
19 Panel from the approval of a request for an NFA in this limited circumstance.

20 4.2.3.6.2. Remediation Phase. The schedule for sampling
21 during the period of remediation (the "Remediation Phase") is described in Section 4.3.3.

22 4.2.3.6.3. Attainment/Post-Remediation Phase. The schedule
23 for sampling during the period after a remediation is complete (the "Post-Remediation Phase") is
24 described in Section 4.3.4.

25 4.2.4. Groundwater Well Sampling Result Reporting. For the Term of this
26 Consent Decree, PG&E shall provide to SFHA, concurrently with PG&E's submittal to the
27 Regional Board: (a) a copy of each groundwater monitoring report for Compliance Wells in the
28 100' Band; and (b) copies of any RACR(s) addressing a Compliance Well.

1 4.2.4.1. A RACR shall include. (a) a description of the approved
 2 remedial action; (b) a description of the remedial activities; and (c) a recommendation for further
 3 action, which shall include a recommendation for at least eight (8) quarters of monitoring.

4 **4.3. Remediation in the 100' Band**

5 4.3.1. Groundwater Remedy Triggers. Subject to Section 4.3.2, PG&E shall be
 6 required to evaluate and submit to the Regional Board for approval a RAP to address
 7 groundwater conditions identified in the sampling of the Compliance Wells under Section 4.2.3
 8 only in the following circumstances: (a) where statistically, at the conclusion of eight
 9 consecutive quarters of groundwater monitoring following entry of this Consent Decree,
 10 applying a 95% UCL of the Total Trigger PAHs data collected over those eight consecutive
 11 quarters determined in accordance with the U.S. EPA RCRA Unified Guidance (2009) statistical
 12 analysis, the data for the groundwater Compliance Well show an exceedance of 105 µg/L Total
 13 Trigger PAHs, with each Compliance Well to be separately evaluated; (b) if, after the first
 14 quarter of groundwater monitoring following entry of this Consent Decree, data show an
 15 exceedance of 2500 µg/L Total Trigger PAHs in a Compliance Well and such exceedance is
 16 confirmed through follow-up sampling in the same Compliance Well(s) in which such
 17 exceedance occurred as soon thereafter as reasonably practicable; or (c) if, after the first quarter
 18 of groundwater monitoring following entry of this Consent Decree, data show an exceedance of
 19 500 µg/L Total Trigger PAHs but less than 2500 µg/L Total Trigger PAHs in a Compliance
 20 Well, then PG&E shall undertake monthly groundwater monitoring sampling at such
 21 Compliance Well(s), and if seven (7) consecutive monthly samples thereafter in such
 22 Compliance Well(s) show(s) Total Trigger PAHs above 105 µg/L, applying a 95% UCL
 23 determined in accordance with the U.S. EPA RCRA Unified Guidance (2009) statistical
 24 analysis.

25 4.3.2. Development and Proposal of Groundwater Remedial Action or NFA
 26 Request. In the event one or more of the triggering circumstances described in Section 4.3.1
 27 occurs, PG&E shall either develop and propose a RAP to address the identified contamination
 28

1 for the approval of the Regional Board and consideration by other regulatory agencies with
 2 jurisdiction or request an NFA determination from the Regional Board. PG&E shall be entitled
 3 to evaluate, develop and prepare the RAP and determine the remedy to be proposed in the RAP
 4 in the exercise of its sole and absolute discretion. SFHA shall not be entitled or permitted to
 5 participate in the development or preparation of such RAP(s), except that SFHA may participate
 6 in any public comment process as allowed by the Regional Board and exercise its right to appeal
 7 certain RAP approvals pursuant to Section 5. If the remedy proposed in the RAP explicitly
 8 includes the technically reasonable removal of any Compliance Well, the remedy must also
 9 explicitly address replacement monitoring.

10 4.3.2.1. SFHA Right of Appeal. SFHA shall have a right to appeal to
 11 the Panel, in accordance with Section 5, any approval or grant by the Regional Board or the
 12 State Water Board of: (a) a "Monitoring Only" remedy (as defined in Section 4.3.3.1); (b) an
 13 MNR remedy (as defined in Section 4.8.1), or (c) a request for an NFA determination (except as
 14 set forth in Section 4.2.3.6.1).

15 4.3.3. Implementation of Remedy. Following approval of a proposed RAP by
 16 the Regional Board or the State Water Board, as well as approval by any other regulatory agency
 17 with jurisdiction and resolution of any appeal by SFHA, PG&E shall implement the Approved
 18 RAP.

19 4.3.3.1. Monitoring and Reporting During Implementation of a Non-
 20 "Monitoring Only" Remedy within the 100' Band. In the event that a particular remedy
 21 explicitly includes the technically reasonable removal of any Compliance Well, the remedy must
 22 explicitly address replacement monitoring. At the initiation of a "Non-Monitoring Only"
 23 remedy, i.e., a remedy that calls for any actions beyond only further monitoring, then PG&E
 24 shall continue quarterly monitoring from the same Compliance Wells that triggered the remedy
 25 and those immediately adjacent, beginning at the initiation of the remedy and continuing until
 26 the remedy is complete. PG&E shall prepare and provide to the Regional Board and SFHA
 27 quarterly monitoring reports containing the results of the monitoring called for in the Approved
 28 RAP. PG&E shall submit an annual groundwater monitoring report to the Regional Board, to be

1 sent concurrently to SFHA, which contains the results of such monitoring. Such annual
 2 groundwater monitoring report shall include a request for approval of either further Monitoring
 3 Only, a transition to Post-Remediation Monitoring (as described in Section 4.3.4), or another
 4 remedy. If an additional Monitoring Only Remedy is approved, subject to SFHA's rights of
 5 appeal under Section 5, PG&E shall undertake the monitoring according to the schedule
 6 approved by the Regional Board and submit the annual groundwater monitoring reports to the
 7 Regional Board and concurrently to SFHA. Except for in-situ chemical or biological
 8 remediation, remedy "Completion" for other remedial actions shall be at the time the last
 9 demobilization of contractors associated with the remedy approved in the RAP is undertaken (by
 10 way of example and not limitation, e.g., the completion of excavation and backfilling, or, in the
 11 context of a containment remedy, the completion of construction of the containment remedy).
 12 For in-situ chemical or biological treatment remedies, "Completion" is defined as the time that
 13 in-situ conditions are no longer conducive to the in-situ remediation technique selected for the
 14 remediation, or when remedial action objectives have been met and a request for transition to
 15 Post-Remediation Monitoring is approved by the Regional Board.

16 4.3.3.2. Monitoring and Reporting During Implementation of a
 17 "Monitoring Only Remedy." In the event an Approved RAP consists solely of monitoring
 18 ("Monitoring Only Remedy"), PG&E shall implement the monitoring as called for under the
 19 Approved RAP. PG&E shall submit an annual groundwater monitoring report to the Regional
 20 Board, to be sent concurrently to SFHA, which contains the results of such monitoring. Such
 21 annual groundwater monitoring report shall include a request for approval of either further
 22 Monitoring Only, an NFA determination, or another remedy. If an additional Monitoring Only
 23 Remedy is approved, subject to SFHA's rights of appeal under Section 5, PG&E shall undertake
 24 the monitoring according to the schedule approved by the Regional Board and submit the annual
 25 groundwater monitoring reports to the Regional Board and concurrently to SFHA.

26 4.3.3.3. SFHA's Right of Appeal. SFHA shall have a right to appeal,
 27 pursuant to Section 5, an approval by the Regional Board of a request by PG&E for approval of
 28

1 a Monitoring Only Remedy or NFA determination pursuant to this Section 4.3.3, but only as to
2 those wells that are covered by such approval.

3 4.3.4. Post-Remediation Monitoring. Unless the Approved RAP consists solely
4 of no less than eight (8) quarters of groundwater monitoring, following the Completion of the
5 non-Monitoring Only remedial action under Section 4.3.3.1, PG&E shall undertake eight (8)
6 quarters of groundwater monitoring in the respective Compliance Wells identified in Section
7 4.3.3.1 in accordance with the protocol described in Sections 4.2.3.2 through 4.2.3.5 ("Post-
8 Remediation Monitoring"). In the event the Approved RAP consists solely of at least eight (8)
9 quarters of groundwater monitoring, then no further groundwater monitoring shall automatically
10 be required upon the completion of such monitoring under Section 4.3.3.2.

11 4.3.5. Post-Remediation Reporting Obligations. PG&E shall report the results of
12 its Post-Remediation Monitoring in an annual report to be submitted to the Regional Board with
13 a concurrent copy to SFHA.

14 4.3.5.1. Timing of Annual Reports. PG&E shall issue such annual
15 reports promptly after the eight (8) quarters of Post-Remediation Monitoring required under
16 Section 4.3.4 are satisfied for the respective Compliance Wells, and then every year thereafter
17 for the Term of this Consent Decree until an NFA determination is approved by the Regional
18 Board or State Water Board for the respective Compliance Wells and becomes "final." For
19 purposes of this Consent Decree, a Regional Board or State Water Board determination or
20 approval is "final" if the determination or approval is not appealed to the Panel under Section 5,
21 or, if the determination or approval is appealed, the appeal does not result in the Panel's rejection
22 of the Board approval or determination pursuant to the process set forth in Section 5.

23 4.3.5.2. Required Alternative Proposals In Annual Reports. In the
24 annual reports, PG&E shall propose one of the following three options to the Regional Board:
25 (a) additional remedial action; (b) further Monitoring Only; or (c) a request for an NFA
26 determination.

27 4.3.5.2.1. SFHA's Right of Appeal. SFHA shall have a right
28 to appeal to the Panel, in accordance with Section 5, any approval or grant by the Regional

1 Board or the State Water Board of a request made by PG&E for approval of a Monitoring Only
2 Remedy or a request for an NFA determination pursuant to Section 4.3.5.2, but only as to such
3 Compliance Wells that are covered by such approval or determination.

4 4.3.5.3. Non-MGP Residue. In the event PG&E concludes during the
5 groundwater sampling and analyses undertaken pursuant to Section 4.3 that identified PAH
6 contamination in a sampled Compliance Well is not consistent with MGP residue, then PG&E
7 shall request approval of an NFA determination from the Regional Board as to such well.

8 4.3.5.3.1. SFHA's Right to Appeal. SFHA shall have a right
9 to appeal to the Panel, in accordance with Section 5, any approval by the Regional Board or the
10 State Water Board of an NFA determination pursuant to Section 4.3.5.3.

11 4.3.6. No SFHA Right of Appeal. Notwithstanding anything to the contrary
12 herein, SFHA shall have no right of appeal to the Panel in regards to the 100' Band in the
13 following other circumstances:

14 4.3.6.1. where, other than in association with a request for Monitoring
15 Only included in an annual report the Regional Board approves a proposal for continued
16 monitoring contained in a quarterly monitoring report;

17 4.3.6.2. where the Regional Board approves a proposal for continued
18 monitoring contained in an annual report issued during the first eight (8) quarters of monitoring
19 during the Pre-Remediation Phase pursuant to Section 4.2.3.6.1;

20 4.3.6.3. where the Regional Board approves a request for an NFA
21 determination following the first eight (8) quarters of monitoring during the Pre-Remediation
22 pursuant to 4.2.3.6.1 when there has been no exceedance under Section 4.3.1 at the groundwater
23 monitoring wells that are the subject of the NFA;

24 4.3.6.4. where the Regional Board approves a proposal for continued
25 monitoring in a groundwater monitoring report issued during the first eight (8) quarters of
26 monitoring following the completion of a non-Monitoring Only remedy under Section 4.3.3; and

27 4.3.6.5. where the sole basis for appeal of a Monitoring Only remedy
28 or NFA determination would be that PAH concentrations in groundwater monitoring wells

1 either upgradient of or within a containment remedy, if sampled, continue to exceed the remedy
 2 trigger. Containment remedies are designed to contain, and not to remove or reduce,
 3 groundwater with PAH concentrations exceeding the groundwater remedy trigger. Whether a
 4 containment remedy is effective shall be based upon other factors, including without limitation,
 5 water levels, evidence indicating there is no communication of groundwater with the Bay in the
 6 subject area, and any sentry wells installed as a part of the containment remedy, as justified in
 7 the Board approved remedy plan.

8 **4.4. Offshore Investigation.** PG&E shall undertake the work as set forth in this
 9 Section 4.4 within the offshore area defined in Section 4.4.1.

10 4.4.1. Offshore Investigation – Bayward and Lateral Extent. PG&E shall
 11 conduct the bayward and lateral delineation of MGP-related impacts in the following areas:

12 4.4.1.1. Bayward Extent. The bayward extent of the offshore
 13 investigation required under this Section 4.4 shall extend from the mean high tide line and
 14 continue bayward until the bayward extent of contamination consistent with MGP residue has
 15 been reached, subject to any physical or safety considerations that would present unreasonable
 16 risks.

17 4.4.1.2. Lateral Extent Relative to Shoreline. The lateral extent of the
 18 offshore investigation required under this Section 4.4 relative to the shoreline shall be as
 19 follows, unless the lateral extent of contamination consistent with MGP residue relative to the
 20 shoreline is reached prior to the limits identified below (in which case the lateral extent shall
 21 terminate at such location):

22 4.4.1.2.1. Limits in the Marina. From Lyons Street (western
 23 limit) to Van Ness Avenue (eastern limit).

24 4.4.1.2.1.1. West Harbor. Within the West Harbor (as
 25 defined in Section 4.10), but PG&E shall only be required to conduct passive sampling, in the
 26 manner and locations described in Section 4.10 and as shown on "**Exhibit 16**".

27 4.4.1.2.2. Limits in Pier 39 to Pier 45. From Pier 45 (western
 28 limit) to Pier 35 (eastern limit).

1 4.4.2. Offshore Investigation-Vertical Extent. PG&E shall conduct the vertical
2 delineation of MGP-related impacts to practicable limits presented by safety considerations, as
3 determined by a competent person (as defined by OSHA Regulation, 29 C.F.R. 1926.32(f))
4 performing the work, to sediment depths targeted to twenty-five (25) feet below sediment
5 surface ("bss"), and no less than twenty (20) feet bss; provided, however, that if NAPL
6 consistent with MGP residue is encountered at the lowest sampling depth in a boring location
7 then PG&E shall use TarGOST to continue its vertical delineation until NAPL is no longer
8 present.

9 **4.4.3. Offshore Investigation – Boring Locations**

10 4.4.3.1. Marina. Sampling will be conducted at the locations identified
11 on the map attached hereto as "**Exhibit 9**" (the "New Marina OS Locations"). The sampling for
12 new Marina OS Locations adjacent to the Marina Green Seawall will be located bayward of the
13 seawall apron extending approximately seventy-five (75) feet from the seawall.

14 4.4.3.1.1. In the event the bayward extent of contamination
15 consistent with MGP residue has not been reached within the boundaries of the New Marina OS
16 Locations, further sampling, extending beyond the New Marina OS Locations, will be
17 undertaken on an iterative basis until the bayward extent contamination consistent with MGP
18 residue is identified, at which time the outer limits of the MGP residue offshore of the Marina
19 will be deemed to have been identified and PG&E shall not be required to undertake any
20 investigation or sampling further bayward of the Marina.

21 4.4.3.1.2. In this iterative process, the first bayward step-outs
22 from the New Marina OS Locations would be no more than fifty (50) feet bayward of the first
23 row of sampling locations; the next step-out distance would be no more than one hundred (100)
24 feet bayward from the first step-out sample locations (one hundred and fifty (150) feet bayward
25 from the first row); and any further step-outs would be no more than one hundred and fifty (150)
26 feet bayward from the previous step-out locations (three hundred (300) feet bayward from the
27 first row, then four hundred and fifty (450) feet, etc.). Any bayward step-outs would be
28

1 staggered, with one sampling location approximately seventy-five (75) feet to the west of the
 2 triggering location and one sampling location approximately seventy-five (75) feet to the east of
 3 the triggering location. Any lateral step-outs would be one hundred and fifty (150) feet to east
 4 and/or west of the prior step-out location as appropriate, subject to the boundary limitations set
 5 forth in Section 4.4.1. (An illustrative example of the step-out scenarios is depicted in "**Exhibit**
 6 **10**".)

7 4.4.3.2. Fort Mason. Sampling will be conducted at the locations
 8 identified on the map attached hereto as **Exhibit 8**.

9 4.4.3.3. Pier 35 to Pier 45. PG&E previously conducted sediment
 10 sampling in the offshore area between Pier 35 and Pier 45. In lieu of undertaking additional pore
 11 water and sediment core sampling in this area, PG&E may instead apply a surrogate predictive
 12 pore water equivalent ("PWeq") to evaluate whether any remedy is required, to be developed in
 13 accordance with the protocol set forth in "**Exhibit 11**". The formula(s) (the "PWeq Formula(s)")
 14 will then be applied to existing data from bulk sediment sampling in other areas of Pier 35 to
 15 Pier 45 to generate PWeq values for those locations. Notwithstanding the foregoing, PG&E
 16 reserves the right, in its sole and absolute discretion, to collect and analyze actual pore water
 17 samples—in accordance with the protocol described in **Exhibit 12**—in lieu of applying the
 18 PWeq. In addition, in all instances where PWeq is applied, PG&E shall have the right to take
 19 confirmatory pore water samples, in accordance with the protocol described in **Exhibit 12**. In
 20 that event, the Laboratory Results from such confirmatory samples would be used to determine
 21 whether a remedy is required under Section 4.7, and not the PWeq (i.e., actual measurements
 22 will supersede the PWeq predictive analysis).

23 4.4.3.3.1. East Harbor. PG&E already has undertaken
 24 extensive sampling in the area known as the East Harbor, which is shown on the map attached
 25 hereto as "**Exhibit 13**". It is contemplated that the East Harbor area, which is owned and
 26 operated by CCSF through its Recreation and Parks Department, will be remediated in
 27 coordination with CCSF's renovation or reconfiguration of the East Harbor marina. Contingent
 28 upon such remediation occurring, PG&E is not required by this Consent Decree to conduct any

pre-remediation sampling in East Harbor, but shall undertake post-remedial sampling and monitoring, depending upon the nature of the remedy or remedies implemented in the East Harbor, in accordance with Section 4.9. In the event the East Harbor is not remediated in coordination with CCSF's anticipated renovation or reconfiguration of the East Harbor marina, then PG&E shall grid or subdivide the area into five (5) sampling locations, with spacing no less than approximately fifty (50) feet and no greater than approximately one hundred fifty (150) feet. In the event such minimum approximately fifty (50) foot spacing cannot be achieved, the total number of sample locations may be reduced as needed to achieve such minimum spacing, except, in all events, a minimum of two (2) samples will be taken. In the event that such maximum approximately one hundred and fifty (150) foot spacing would be exceeded if only five (5) sampling locations were used, additional sampling locations shall be added as necessary so as not to exceed such maximum spacing. From all of the sample locations, PG&E shall collect and analyze pore water in accordance with the sampling protocol set forth in **Exhibit 12** and Section 4.5 at three depths—zero to half (0-0.5) a foot bss, one to one and one-half (1-1.5) feet bss, and two to three (2-3) feet bss; co-located bulk sediment may also be collected and analyzed. Alternatively, PG&E may apply the PWeq, established under Section 4.4.3.3 and **Exhibit 11** to bulk sediment samples already taken from the East Harbor.

4.4.3.4. Non-MGP Residue. In the event that PG&E finds PAH contamination during the iterative offshore investigation called for by this Section 4.4, but determines that the contamination in an offshore area is not consistent with MGP Residue, PG&E shall request an NFA Determination from the Regional Board for said area.

4.4.3.4.1. SFHA's Right to Appeal. SFHA shall have a right to appeal to the Panel, in accordance with Section 5, any approval by the Regional Board or the State Water Board of an NFA determination requested by PG&E pursuant to Section 4.4.3.4.

4.5. **Offshore Investigation – Sampling Protocol and Methods**

4.5.1. Pore Water Sampling Protocol. All pore water samples taken pursuant to this Consent Decree shall follow the sampling protocol set forth in **Exhibit 12**.

1 4.5.2. New Boring Sampling Methodology.

2 4.5.2.1. Bulk Sediment Core Samples. For every new boring conducted
3 following entry of this Consent Decree, lateral and vertical delineation of MGP-related impacts
4 will be delineated by taking continuous bulk sediment cores using a sampling depth penetration
5 target of twenty to twenty-five (20 to 25) feet bss, with a best effort to achieve a minimum
6 sampling depth of twenty (20) feet bss or as close thereto as possible in the event of refusal, and
7 bulk sediment cores shall be sub-sampled: (a) in co-location with any pore water samples taken
8 from the first three (3) feet bss; and (b) every two (2) feet thereafter below three (3) foot depth
9 bss, biased to field observations of potential MGP impacts and/or lithological contacts.

10 4.5.2.1.1. A "best effort" to recover a nominal twenty (20)
11 foot sediment core (adjusted for recovery) at a planned or step-out station will be defined as
12 attempting up to three borings within a twenty (20) foot radius. Failing to recover a nominal
13 twenty (20) foot sediment core, the longest sediment core will be selected for subsampling as
14 described herein, unless a shorter sediment core yields observations of potential MGP residual-
15 impacts (NAPL, sheen or odors) that are not observed in the longest core. In such cases, the core
16 with the greatest vertical extent of the impacts will be selected. In any case, the planned or step-
17 out station will be relocated approximately fifty (50) feet in the step-out direction (e.g., **Exhibit**
18 **10**) to attempt to obtain the nominal twenty (20) foot sediment core recovery. Up to three more
19 attempts within a twenty (20) foot radius of the relocated station will complete the "best effort"
20 to achieve the vertical delineation objective, and the same procedure will be used to determine
21 the core selected for sampling. PG&E is not required to attempt any additional borings, beyond
22 the six described herein, to achieve the vertical delineation objective for a planned or step-out
23 station. In addition, no more than two borings are required to be subsampled for chemical
24 analysis as described in Sections 4.5.2.1, 4.6.1, and 4.6.2. Field observations of potential MGP
25 impacts in the cores not retained for subsampling will be documented with respect to depth
26 interval, adjusted for recovery.

27 4.5.2.2. Pore Water Samples. Pore water samples will be taken at three
28 depth intervals—zero to half (0-0.5) a foot bss, one to one and half (1-1.5) feet bss, and two to

three (2-3) feet bss—using an in situ low flow piezometer method as described in **Exhibit 12**; PWeq will be applied to sediment depths greater than three (3) feet bss.

4.5.2.3. Deep NAPL. For every new boring conducted following entry of this Consent Decree, if NAPL consistent with MGP residue is encountered in a boring location and extends to or beyond the terminus of the boring, TarGOST will be employed to determine the full vertical extent of such NAPL.

4.5.2.4. Except as required as part of any remediation plan or in accordance with the Offshore Investigation in Section 4.4.3 or the PWeq study detailed in **Exhibit 11** or the post-remedial monitoring obligations described in Section 4.8 and contingent upon PG&E's application of PWeq to the results of such previously taken samples, PG&E shall not be required to re-sample any offshore locations at which bulk sediment samples already had been taken prior to entry of this Consent Decree.

4.6. Offshore Investigation – Sample Analyses

4.6.1. PAH Analysis of Pore Water and Bulk Sediment Cores. Pore water samples and bulk sediment cores will be analyzed for Sediment/Pore Water PAHs. "Sediment/Pore Water PAHs" shall mean those PAHs identified on the list of approximately eighty (80) constituents being analyzed under PG&E's current sediment sampling program, as shown on **Exhibit 14**. Notwithstanding the foregoing, Sediment/Pore Water PAHs shall not be used as the trigger for any remedy or Chemical Performance Standard. Instead, only Total Trigger PAHs shall be used for those purposes, in accordance with Section 4.10. The PAHs included in "Total Trigger PAHs" for sediment pore water are the thirty-four (34) alkyl and parent PAH compounds that are included in U.S. EPA's PAH-34 list (**Exhibit 4**).

4.6.2. Supplemental Constituent Analysis of Bulk Sediment Cores. The following supplemental constituents will be sampled for in bulk sediments, but shall not be a trigger for a remedy under this Consent Decree: BTEX, styrene, carbon disulfide, and naphthalene using U.S. EPA Method 8260, and TEPH using U.S. EPA Methods 8015/8100 or equivalent (collectively, "Supplemental Constituents").

1 4.6.3. Non-Filtration of Pore Water Sample. PG&E shall not field filter pore
2 water samples. Upon its submittal of the samples to the analytical laboratory, PG&E will direct
3 that the pore water samples not be filtered, and that the laboratory, instead, flush from pore
4 water samples visual particles that have settled in a separatory funnel.

5 4.6.4. Trigger Straddle. Where the concentrations of primary and duplicate
6 samples straddle a trigger level and field duplicate relative percent difference ("RPD") goals are
7 met (with goals defined as within 25% for Total Trigger PAHs rather than individual chemicals),
8 the arithmetic mean concentration of Total Trigger PAHs of the two (2) samples shall be
9 determined for evaluation of whether a remedy has been triggered under Section 4.7. Where
10 duplicate goals fail, the higher concentration pore water sample shall be used for evaluation of
11 whether a remedy has been triggered under Section 4.7, unless PG&E resamples the affected
12 station within sixty (60) days after receipt of the draft laboratory data, in which case the
13 resampled results will be used for evaluation of whether a remedy has been triggered under
14 Section 4.7.

15 **4.7. Offshore Investigation – Remedy Triggers and Areas**

16 4.7.1. Offshore Areas Subject To Potential Remedy. The offshore areas that are
17 subject to potential remedial action by PG&E pursuant this Section 4.7 include only those
18 offshore areas that are co-extensive with the offshore areas of Pier 35 to Pier 45 and the Marina
19 that are to be investigated pursuant to Section 4.4.

20 4.7.2. Total Trigger PAHs in Pore Water Remedy Trigger. PG&E shall propose
21 a remedy in accordance with Section 4.8.1 if Total Trigger PAHs from pore water extracted
22 from the first three (3) feet of a sampling location exceed 15 µg/L, as reported in the Laboratory
23 Results, in accordance with Section 4.6.

24 4.7.3. PWeq Remedy Trigger. Subject to PG&E's rights to take confirmatory
25 pore water samples under Section 4.7.3.1, if the PWeq is being applied, PG&E shall propose a
26 remedy in accordance with Section 4.8.1 if the PWeq of bulk sediment cores from the first three
27
28

(3) feet exceed 15 µg/L using the statistical analysis for PWeq developed in accordance with

Exhibit 11.

4.7.3.1. Right to Take and Analyze Confirmatory Pore Water Samples.

Following any application of the PWeq, PG&E shall have the right, but not the obligation, to take and analyze confirmatory pore water samples pursuant to the sampling and analytical protocols and methodologies described in Sections 4.5 and 4.6 and exhibits referenced therein. If such confirmatory samples are taken, the Laboratory Results from such samples would be used (i.e., actual measurements would supersede predictive analysis), in determining whether a remedy has been triggered for such location(s) in accordance with this Section 4.7.

4.7.4. MGP Contamination Identified Below Three Feet Below Sediment Surface. If Total Trigger PAHs consistent with MGP residue and at levels above the PWeq developed in accordance with Exhibit 11 are identified at sediment depths below three (3) feet bss, in a location where a remedy has not been triggered under Section 4.10, then PG&E will include such area in a sediment management plan to be provided to the owner of such location, with copies to all agencies participating in the Dredged Material Management Office ("DMMO") in the San Francisco Bay area and to SFHA. The sediment management plan shall include "Upset Event" bathymetry (as defined herein). PG&E shall include with the sediment management plan a transmittal letter that includes a high-level summary of the management plan and a map showing covered areas.

4.8. **Offshore Remedy – Selection and Implementation.**

4.8.1. PG&E Remedy Proposal. In the event a sediment remedy is triggered under Section 4.7 for a location or locations subject to the offshore investigation under Section 4.4, PG&E shall either (1) submit a RAP to the Regional Board for each respective area at which a remedy has been triggered that fall(s) into one or a combination of the following four remedy categories: (a) removal of all sediment consistent with MGP from the location(s) (the "All Residue Removed Remedy"); (b) coverage of sediment containing contamination consistent with MGP residue by an engineered cap (which includes, without limitation, capping with clean sand and/or amended sand, and armoring as warranted) (the "Engineered Cap Remedy"); (c)

addressing sediment containing contamination consistent with MGP residue using an engineered solution other than a cap (the "Other Engineered Solution Remedy"); or (d) monitoring of natural processes ("Monitored Natural Recovery Remedy" or "MNR Remedy"); or (2) request a No Further Action determination from the Regional Board for an investigated offshore area regardless of an exceedance of the remedy trigger. Without prejudice to any right of SFHA to appeal an approval of an NFA, monitoring-only, or MNR-remedy based on the consideration thereof, PG&E shall have the right, but not the obligation to consider the Surface Weighted Average Concentration ("SWAC") of Total Trigger PAHs in a proposed remedial action area in the development of a remedy for said area.

4.8.1.1. Non-MGP Residue. In the event PG&E finds that PAH contamination in an offshore area subject to investigation under Section 4.4 is not consistent with MGP Residue, PG&E shall request an NFA Determination from the Regional Board for that area.

4.8.1.2. SFHA's Right to Appeal. SFHA shall have a right to appeal to the Panel, in accordance with Section 5, any approval by the Regional Board or the State Water Board of an MNR Remedy or NFA determination requested by PG&E pursuant to Section 4.8.1.

4.8.2. Implementation of RAP. Following the approval of a RAP and the resolution of any appeal by SFHA, PG&E shall then implement the RAP, as approved by the Regional Board or the State Water Board.

4.9. **Offshore – Post Remediation Compliance Monitoring and Reporting**

4.9.1. All Residue Removed Remedy. In the event that a RAP providing for an All Residue Removed Remedy is approved and implemented by PG&E, PG&E shall perform post-remedial compliance testing, which shall be limited to the Chemical Performance Standard Testing and bathymetry, within a reasonable time following dredging as follows:

4.9.1.1. Bathymetry Testing. PG&E shall conduct bathymetry testing once following the completion of dredging to verify dredge elevations.

4.9.1.2. Chemical Performance Standard Testing.

4.9.1.2.1. Sample Locations Within Dredge Prism. PG&E will grid or subdivide the dredge prism into five (5) sampling locations, with spacing no less than approximately fifty (50) feet and no greater than approximately one hundred and fifty (150) feet. In the event such minimum approximately fifty (50) foot spacing cannot be achieved, the total number of sample locations may be reduced as needed to achieve such minimum spacing, except, in all events, a minimum of two (2) samples will be taken. In the event that such maximum approximately one hundred and fifty (150) foot spacing would be exceeded if only five (5) sampling locations were used, additional sampling locations shall be added as necessary so as not to exceed such maximum spacing.

4.9.1.2.2. Sample Collection and Analysis Within the Dredge Prism. From all of the sample locations described in Section 4.9.1.2.1, PG&E will collect and analyze pore water in accordance with the sampling protocol set forth in **Exhibit 12** at three depths—zero to half (0-0.5) a foot bss, one to one and a half (1-1.5) feet bss, and two to three (2-3) feet bss; co-located bulk sediment may also be collected and analyzed.

4.9.1.2.3. Sample Locations Along Dredge Perimeter Boundary. PG&E will subdivide the perimeter boundary of the dredged area, extending approximately fifty (50) feet beyond the dredged area, into a minimum of five (5) sampling locations, with spacing no less than approximately fifty (50) feet and no greater than approximately one hundred and fifty (150) feet. In the event that such minimum fifty (50) foot spacing cannot be achieved, the total number of sample locations may be reduced as needed to achieve such spacing, except, in all events, a minimum of two (2) samples will be taken. In the event such maximum approximately one hundred and fifty (150) foot spacing would be exceeded if only five (5) sampling locations were used, additional sampling locations shall be added as necessary so as not to exceed such maximum spacing.

4.9.1.2.4. Sample Collection and Analysis Along Dredge Perimeter. From all of the sample locations described in Section 4.9.1.2.3, PG&E will collect and analyze pore water in accordance with the sampling protocol set forth in **Exhibit 12** at two depths—zero to half (0-0.5) a foot bss and one to one and a half (1-1.5) feet bss—using an in

1 situ low flow piezometer method to evaluate potential impacts of dredging residuals settling
2 beyond the dredge prism; co-located bulk sediment may also be collected and analyzed.

3 4.9.1.3. Reporting and Consequence of Testing Results. Following
4 completion of the testing described Sections 4.9.1.1 and 4.9.1.2—which shall occur only once,
5 following completion of dredging—PG&E shall submit a RACR to the Regional Board, with a
6 copy to SFHA, which shall include a description of the remedial action, sampling results, and a
7 recommendation for further action, monitoring or an NFA determination.

8 4.9.1.3.1. SFHA's Right to Appeal. SFHA shall have a right
9 to appeal to the Panel, in accordance with Section 5, any approval by the Regional Board or the
10 State Water Board of a monitoring only or MNR Remedy, or NFA determination recommended
11 by PG&E pursuant to Section 4.9.1.3.

12 4.9.2. Engineered Cap Remedy. In the event a RAP providing for an Engineered
13 Cap Remedy is approved and implemented by PG&E, PG&E shall perform Engineered Cap
14 Integrity Testing and Chemical Performance Standard Testing, in the first (1st), second (2nd),
15 third (3rd), and fifth (5th) years following the completion of construction of the engineered cap as
16 follows:

17 4.9.2.1. Engineered Cap Integrity Testing. Engineered Cap Integrity
18 Testing shall consist of performing bathymetry of the cap area, and testing for cap thickness.

19 4.9.2.1.1. Bathymetry and Cap Thickness Measurement.
20 PG&E will perform bathymetry in the cap area, extending approximately fifty (50) feet outside
21 the cap geometry, and will include in its work verification of any dredge elevations.

22 4.9.2.1.2. Cap Thickness Measurement. PG&E will measure
23 supplemental cap thickness in the cap area. PG&E may use settlement plates or direct
24 measurement of cap thickness as the depth of sediment above the armor/isolation/reactive
25 material layer. Engineered cap designs will typically anticipate accretion of a habitat layer
26 approximately six (6) to twelve (12) inches.

1 4.9.2.1.3. Upset Event. In the event of an Upset Event, PG&E
2 will undertake additional monitoring of cap integrity (bathymetry and any measurement of cap
3 thickness) in accordance with Sections 4.9.2.1.1 and 4.9.2.1.2.

4 4.9.2.2. Chemical Performance Standard Testing. PG&E shall sample
5 pore water within the capped area and the cap's perimeter boundary as follows:

6 4.9.2.2.1. Sample Locations In the Cap Area. PG&E will grid
7 or subdivide the cap area into five (5) sampling locations, with spacing no less than
8 approximately fifty (50) feet and no greater than approximately one hundred fifty (150) feet. In
9 the event such minimum approximately fifty (50) foot spacing cannot be achieved, the total
10 number of sample locations may be reduced as needed to achieve such minimum spacing,
11 except, in all events, a minimum of two (2) samples will be taken. In the event that such
12 maximum approximately one hundred and fifty (150) foot spacing would be exceeded if only
13 five (5) sampling locations were used, additional sampling locations shall be added as necessary
14 so as not to exceed such maximum spacing.

15 4.9.2.2.2. Collection and Analysis of Pore Water In Cap
16 Area. PG&E shall collect and analyze pore water within the zone from the top of the cap
17 reactive/isolation/armor layer to approximately six (6) inches above the top of said area, in
18 accordance with the protocol set forth in **Exhibit 12**. PG&E may also collect and analyze co-
19 located bulk sediment cores.

20 4.9.2.2.3. Sample Locations Within Cap Perimeter Boundary.
21 PG&E shall subdivide a perimeter boundary extending approximately fifty (50) feet beyond the
22 capping footprint into a minimum of five (5) sampling locations, with spacing no less than
23 approximately fifty (50) feet and no greater than approximately one hundred and fifty (150) feet.
24 In the event that such minimum fifty (50) foot spacing cannot be achieved, the total number of
25 sample locations may be reduced as needed to achieve such spacing, except, in all events, a
26 minimum of two (2) samples will be taken. In the event such maximum approximately one
27 hundred and fifty (150) foot spacing would be exceeded if only five (5) sampling locations were
28

1 used, additional sampling locations shall be added as necessary so as not to exceed such
2 maximum spacing.

3 4.9.2.2.4. Collection and Analysis of Pore Water Within the
4 Cap Perimeter Boundary. Within the perimeter boundary, PG&E shall collect and analyze pore
5 water in accordance with the sampling protocol set forth in **Exhibit 12** at three depths in each
6 area—zero to half (0-0.5) a foot bss, one to one and half (1-1.5) feet bss, and two to three (2-3)
7 feet bss. PG&E may also collect and analyze co-located bulk sediment cores.

8 4.9.2.3. Reporting and Consequence of Testing Results. Following
9 completion of the cap construction, PG&E shall submit a RACR, which shall include a
10 description of the remedial action, to the Regional Board with a copy to SFHA. Following each
11 sampling event, PG&E shall submit to the Regional Board with a copy to SFHA, a monitoring
12 report, which shall include sampling results, and a recommendation for continued monitoring,
13 adaptive maintenance, another remedy, or, in the case of sampling that occurs in the fifth (5th)
14 year after construction of the cap, an NFA determination.

15 4.9.2.3.1. SFHA's Right to Appeal. SFHA shall have a right
16 to appeal to the Panel, in accordance with Section 5, any approval by the Regional Board or the
17 State Water Board of a monitoring only or MNR Remedy or NFA determination recommended
18 by PG&E pursuant to Section 4.9.2.3.

19 4.9.3. Other Engineered Solution Remedy. In the event that a RAP providing for
20 an Other Engineered Solution Remedy is approved and implemented by PG&E, PG&E shall
21 only be required to perform Chemical Performance Standard Testing and Upset Event testing.
22 The frequency of the Chemical Performance Standard Testing will be dependent upon the
23 particular engineered solution remedy implemented, but in no event shall such testing be
24 performed less than once, nor shall it occur more frequently than after construction and then the
25 first (1st), second (2nd), third (3rd), and fifth (5th) years following completion of construction of
26 the remedy.

1 4.9.3.1. Chemical Performance Standard Testing. PG&E shall sample
2 pore water within the area of the Other Engineered Solution Remedy and the remedy area's
3 perimeter boundary as follows:

4 4.9.3.1.1. Sample Locations Within the Remedy Area. PG&E
5 will grid or subdivide the remedy area footprint into a minimum of five (5) sampling locations,
6 with spacing no less than approximately fifty (50) feet and no greater than approximately one
7 hundred fifty (150) feet. In the event such minimum approximately fifty (50) foot spacing
8 cannot be achieved, the total number of sample locations may be reduced as needed to achieve
9 such minimum spacing, except, in all events, a minimum of two (2) samples will be taken. In the
10 event that such maximum approximately one hundred and fifty (150) foot spacing would be
11 exceeded if only five (5) sampling locations were used, additional sampling locations shall be
12 added as necessary so as not to exceed such maximum spacing.

13 4.9.3.1.2. Sample Locations Along Remedy Perimeter
14 Boundary. PG&E will subdivide a perimeter boundary of the remedy area, extending a
15 maximum of fifty (50) feet beyond the remedial response footprint, into a minimum of five (5)
16 sampling locations, with spacing no less than approximately fifty (50) feet and no greater than
17 approximately one hundred and fifty (150) feet. In the event that such minimum fifty (50) foot
18 spacing cannot be achieved, the total number of sample locations may be reduced as needed to
19 achieve such spacing, except, in all events, a minimum of two (2) samples will be taken. In the
20 event such maximum approximately one hundred and fifty (150) foot spacing would be
21 exceeded if only five (5) sampling locations were used, additional sampling locations shall be
22 added as necessary so as not to exceed such maximum spacing.

23 4.9.3.1.3. Collection and Analysis In All Locations. From all
24 of the sample locations described in Sections 4.9.3.1.1 and 4.9.3.1.2, PG&E will collect and
25 analyze pore water in accordance with the sampling protocol set forth in **Exhibit 12** at three
26 depths—zero to half (0-0.5) a foot bss one to one and half (1-1.5) feet bss, and two to three (2-3)
27 feet bss; co-located bulk sediment may also be collected and analyzed.
28

1 4.9.3.2. Upset Event. In the event of an Upset Event, PG&E will
2 undertake bathymetry testing in the area of the Other Engineered Solution.

3 4.9.3.3. Reporting and Consequence of Testing Results. Following
4 completion of construction of the Other Engineered Solution, PG&E shall submit a RACR,
5 which shall contain a description of the remedial activities. Following each sampling event,
6 PG&E shall submit to the Regional Board, with a copy to SFHA, a monitoring report, which
7 shall include sampling results, and a recommendation for continued monitoring, adaptive
8 maintenance, another remedy, or an NFA determination.

9 4.9.3.3.1. SFHA's Right to Appeal. SFHA shall have a right
10 to appeal to the Panel, in accordance with Section 5, any approval by the Regional Board or the
11 State Water Board of a monitoring only or MNR Remedy or NFA determination recommended
12 by PG&E pursuant to Section 4.9.3.3.

13 4.9.4. Monitored Natural Recovery (MNR) Remedy. In the event that a RAP
14 providing for an MNR is approved and implemented by PG&E, PG&E shall perform, within a
15 reasonable time following approval of an MNR remedy, and in the first (1st), second (2nd), third
16 (3rd), and fifth (5th) years following said approval, Chemical Performance Standard Testing and
17 bathymetry as follows:

18 4.9.4.1. Chemical Performance Standard Testing.

19 4.9.4.1.1. Sample Locations Within the MNR Footprint.
20 PG&E will grid or subdivide the MNR footprint into a minimum of five (5) sampling locations,
21 with spacing no less than approximately fifty (50) feet and no greater than approximately one
22 hundred fifty (150) feet. In the event such minimum approximately fifty (50) foot spacing
23 cannot be achieved, the total number of sample locations may be reduced as needed to achieve
24 such minimum spacing, except, in all events, a minimum of two (2) samples will be taken. In the
25 event that such maximum approximately one hundred and fifty (150) foot spacing would be
26 exceeded if only five (5) sampling locations were used, additional sampling locations shall be
27 added as necessary so as not to exceed such maximum spacing.
28

1 4.9.4.1.2. Sample Locations Along MNR Perimeter
 2 Boundary. As part of the year one monitoring event only, PG&E will subdivide a perimeter
 3 boundary of the MNR footprint, extending approximately fifty (50) feet beyond the remedial
 4 response footprint, into a minimum of five (5) sampling locations, with spacing no less than
 5 approximately fifty (50) feet and no greater than approximately one hundred and fifty (150) feet.
 6 In the event that such minimum fifty (50) foot spacing cannot be achieved, the total number of
 7 sample locations may be reduced as needed to achieve such spacing, except, in all events, a
 8 minimum of two (2) samples will be taken. In the event such maximum approximately one
 9 hundred and fifty (150) foot spacing would be exceeded if only five (5) sampling locations were
 10 used, additional sampling locations shall be added as necessary so as not to exceed such
 11 maximum spacing.

12 4.9.4.1.3. Collection and Analysis In All Locations. From all
 13 of the sample locations described in Sections 4.9.4.1.1 and 4.9.4.1.2, PG&E will collect and
 14 analyze pore water in accordance with the sampling protocol set forth in Exhibit 12 at three
 15 depths—zero to half (0-0.5) a foot bss, one to one and half (1-1.5) feet bss, and two to three (2-
 16 3) feet bss; co-located bulk sediment may also be collected and analyzed.

17 4.9.4.2. Bathymetry. PG&E shall conduct bathymetry to document
 18 sediment elevation trends.

19 4.9.4.3. Upset Event. In the event of an Upset Event, PG&E will
 20 undertake bathymetry testing in the area of the of the MNR footprint.

21 4.9.4.4. Reporting and Consequence of Testing Results. PG&E shall
 22 establish the boundary of the MNR footprint in the RAP and/or a RACR for constructed
 23 remedies with an MNR component. Following each sampling event, PG&E shall submit to the
 24 Regional Board, with a copy to SFHA, a monitoring report, which shall include sampling results
 25 to be compared against the predicted recovery timeframe. The Year Five (5) monitoring report
 26 will include a recommendation for further monitoring, adaptive maintenance, another remedy, or
 27 an NFA determination.
 28

4.9.4.4.1. SFHA's Right to Appeal. SFHA shall have a right to appeal to the Panel, in accordance with Section 5, any approval by the Regional Board or the State Water Board of a monitoring only or MNR Remedy or NFA determination recommended by PG&E pursuant to Section 4.9.4.4.

4.9.5. All Offshore Remedy Scenarios. In performing the post-remediation monitoring and sampling under Section 4.9, without prejudice to any right of SFHA to appeal an approval of an NFA, monitoring-only, or MNR-remedy based on the consideration thereof, PG&E shall have the right, but not the obligation, to recommend continued monitoring, adaptive maintenance, another remedy, or an NFA determination under application of a SWAC analysis to the Chemical Performance Standard Testing data. In each of the post-remediation monitoring scenarios in Section 4.9, there shall be an allowance of an approximately twenty (20) foot radius of the original location for resampling (including in the perimeter areas to be sampled) should an obstruction be encountered.

4.10. **West Harbor**. In the area designated as the "West Harbor," which is shown on Exhibit 16, PG&E shall deploy small "passive samplers" in accordance with U.S. EPA-approved passive sampling investigation guidance and methodology, as described in U.S. EPA 2017 Laboratory, Field, and Analytical Procedures for Using Passive Sampling in the Evaluation of Contaminated Sediments: User's Manual. EPA/600/R-16/357, in the areas previously capped as part of CCSF's San Francisco Marina Yacht Harbor West Harbor Renovation Project (Dredge Areas B2-1 and B2-4), and within a perimeter boundary thereof, in the approximate locations shown on Exhibit 16. In the event passive sampling results from a passive sampler within the perimeter indicates a pore water concentration of more than 15 µg/L of Total Trigger PAHs, then PG&E shall undertake further step-out passive sampling, on an iterative basis, staggered and laterally offset in all accessible directions (i.e., west, north, and east) to include the next unsampled one to three closest points in an adjacent row or column, as shown on Exhibit 16. PG&E shall perform such passive sampling pursuant to a work plan to be prepared by PG&E and submitted to the Regional Board. PG&E shall place the passive samplers in the West Harbor with spacing no less than approximately fifty (50) feet, and no greater than approximately one

1 hundred and fifty (150) feet, between the passive samplers. PG&E shall report the results of the
 2 passive sampling in a report submitted to the Regional Board and shall include a
 3 recommendation for No Further Action, further Monitoring Only, or a remedy.

4 4.10.1. No Right of Appeal to Panel. SFHA shall have no right of appeal to the
 5 Panel under Section 5 from any approvals or determinations pursuant to Section 4.10, and the
 6 Panel shall have no authority with respect to any proposals, approvals or actions by PG&E or the
 7 Regional Board concerning the West Harbor, or any request by PG&E for a No Further Action
 8 determination concerning West Harbor. Other than as expressly set forth in this Section 4.10,
 9 PG&E shall have no other obligations under this Consent Decree with respect to the West
 10 Harbor.

11 4.11. **Force Majeure.**

12 4.11.1. PG&E shall not be considered to be in default in the performance of any
 13 of its obligations under this Consent Decree when performance becomes impossible due to
 14 circumstances beyond PG&E's control, including, without limitation, Force Majeure, which
 15 includes, but is not limited to, an act of God, act of war, act of terrorism, fire, explosion,
 16 extraordinary weather event, natural catastrophe, restraint by court order or public authority, or
 17 other cause beyond PG&E's reasonable control (collectively, "Force Majeure"). Delay in
 18 compliance with a specific obligation under this Consent Decree due to a Force Majeure event
 19 as defined in this Section shall not excuse or delay compliance with any other obligations
 20 required under this Consent Decree.

21 4.11.2. Best Efforts to Gain Access, Permits, Consents and Approvals. With
 22 respect to all activities contemplated or required to be undertaken by PG&E pursuant to Section
 23 4, it is understood and agreed that PG&E shall use best efforts to obtain all required access,
 24 permits, consents and approvals from the CCSF and its respective departments and from any
 25 other property owners, if and as needed, and from the governmental agencies with jurisdiction
 26 over such work. Such best efforts shall require that PG&E make all reasonable and practicable
 27 efforts to satisfy all reasonable contingencies or conditions required to gain all necessary access,
 28 permits, consents and approvals, but such best efforts shall not require that PG&E accept

1 unreasonable or impracticable terms or conditions in order to obtain such access, permits,
 2 consents or approvals. If, after using best efforts, PG&E is unable to obtain required access,
 3 permits, consents or approvals to perform an obligation under Section 4, such event shall
 4 constitute a Force Majeure.

5 4.11.3. In the event PG&E claims that compliance with an obligation it has under
 6 this Consent Decree was or is impossible due to a Force Majeure, it shall notify SFHA in writing
 7 within thirty (30) days of when PG&E first knew, or in the exercise of reasonable diligence
 8 under the circumstances should have known, of the event or circumstance that caused or would
 9 cause a failure to comply with such obligation (the "Notice of Force Majeure"). The Notice of
 10 Force Majeure shall identify the specific obligations under the Consent Decree that are or have
 11 been affected by the Force Majeure, the specific nature of the Force Majeure; the anticipated
 12 length of time the delay may persist, and/or whether performance has been rendered impossible
 13 by the Force Majeure; the measures taken or to be taken by to prevent or minimize delay or
 14 impossibility of performance of the affected obligations and any proposed modifications to those
 15 obligation(s) under the Consent Decree. PG&E may request a meet and confer, pursuant to the
 16 dispute resolution process in Section 6, to reach agreement as to a stipulation to be submitted to
 17 the Court for an order modifying this Consent Decree. In the event the Parties do not to reach
 18 agreement following the dispute resolution process, PG&E may move the Court for a
 19 modification of the Consent Decree based upon the Force Majeure and shall have the burden of
 20 establishing the Force Majeure. During the pendency of such a motion to modify the Consent
 21 Decree, PG&E shall not be deemed to be in default, breach or violation of this Consent Decree.
 22 Subject to the immediately preceding sentence, in the absence of a stipulation or order
 23 modifying the Consent Decree, PG&E shall be obligated to comply with all terms of this
 24 Consent Decree, notwithstanding any claim by it of a Force Majeure.

25 4.12. Except as required under Section 4, PG&E is not required by this Consent Decree
 26 to undertake any additional investigation, remediation, monitoring or reporting.

27 **5. APPEALS TO PANEL.** SFHA shall have the following rights of appeal of certain
 28 Regional Board and State Water Board (either, the "Board") approvals to a panel to be formed

1 pursuant to this Section 5 under the appeal process set forth herein. The Panel's sole role shall be
2 to hear appeals in accordance with the procedures set forth herein. The Panel shall serve no other
3 purpose and have no authority other than as expressly provided for in this Section 5.

4 5.1. Formation of Panel. The Panel shall be comprised of three individuals
5 (collectively "Panelists"): one Panelist to be designated by SFHA; one Panelist to be designated
6 by PG&E; and a third Panelist to be jointly chosen by SFHA's designee and PG&E's designee.
7 If SFHA's designee and PG&E's designee cannot agree on the choice for the third Panelist, the
8 competing choices of the Parties' designees for the third Panelist will be submitted by the Parties
9 to the Court (the then-presiding judge in this matter) for resolution. In the event a Party's
10 Panelist designate is no longer willing or able to serve during the term of this Consent Decree,
11 the Party that appointed such Panelist shall have the right to choose a replacement Panelist. In
12 the event the third Panelist selected hereunder is no longer willing or able to serve as a Panelist
13 during the term of this Consent Decree, the other two Panelists will jointly select his or her
14 replacement. The three selected Panelists shall, together, comprise the "Panel."

15 5.1.1. Any person who has been or is employed by Haley & Aldrich or
16 EnviroAssets, Inc. is disqualified for service on the Panel. Otherwise, SFHA and PG&E shall
17 not be restricted in the selection of their respective Panelist designees; provided, however, that
18 prior to his/her selection as a potential Panelist, each candidate shall acknowledge and agree that
19 said candidate/Panelist will not be permitted to, and shall not, himself or herself undertake any
20 work for any Party or for counsel to any Party during the Term of the Consent Decree.
21 Notwithstanding the foregoing, the firm with which the Panelist is affiliated, if any, may
22 perform work for a Party or for a law firm that is counsel to a Party on matters that are unrelated
23 to the matters that are the subject of this Consent Decree, but only so long as the total volume of
24 work performed for such Party or such law firm does not exceed ten percent (10%) of that firm's
25 annual revenue in any given year. In the event a Panelist's firm performs any work for a Party or
26 for a law firm that is counsel to a Party, then the Panelist's firm shall ensure that an "ethical
27 wall" is created to assure there is no exchange of any information, data, documents or other
28

1 communications between the Panelist and anyone else in his/her firm regarding the subject
2 matter of this Consent Decree.

3 5.1.2. Upon its formation, the Panel shall be provided with a copy of this
4 Consent Decree and their attention shall be drawn to these procedures and to other agreed-upon
5 requirements relating to appeals as set forth herein.

6 5.2. No Ex Parte Communication. During the Term of this Consent Decree, the
7 Parties shall not communicate on an *ex parte* basis with any Panelist concerning any matters that
8 are relevant to the subject matters of this Consent Decree (including, without limitation, any
9 matters relating to the nature, scope, results or status of work to be performed under this Consent
10 Decree).

11 5.3. Appeal Process. The following appeal process shall govern all appeals to the
12 Panel permitted under this Consent Decree:

13 5.3.1. Timing of Appeal. Subject to the prohibitions in Sections 4.2.3.6.1, 4.3.6,
14 and 4.10.1, within thirty (30) days following written notification from PG&E to SFHA of the
15 decision of the Board (which must attach a copy of such Board decision) (a) approving a
16 "monitoring only" remedy; (b) approving a MNR remedy proposal; or (c) approving a request
17 for NFA determination, SFHA shall have the right to appeal the approval through submission of
18 a written "Notice of Appeal" to the Panel and to PG&E. SFHA has no right of appeal of any
19 other Board approvals. Any Notice of Appeal submitted by SFHA to the Panel or to PG&E more
20 than thirty (30) days following PG&E's notification to SFHA of the Board's action shall be
21 deemed void and of no force or effect and the Panel shall take no action in response to such
22 Notice of Appeal.

23 5.3.2. Notice of Appeal. SFHA's Notice of Appeal shall include, at a minimum,
24 the following information: the specific action of the Board that the Panel is requested to review
25 and a copy of the order or resolution of the Board that is being challenged.

26 5.3.3. Submittal of Digital Record. Upon receipt from SFHA of a Notice of
27 Appeal, PG&E shall have twenty-one (21) days within which to submit, by email to the Panel
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1 and copied to SFHA, a list with digital links to all documents uploaded to Geotracker from and
2 after and in connection with the approval that is being challenged by the Notice of Appeal.

3 5.3.4. Briefing. Submittals to the Panel by the Parties are to be made as follows:

4 5.3.4.1. SFHA's Submission. No later than thirty (30) days after receipt
5 of the digital record provided for in Section 5.3.3, SFHA may submit to the Panel for its review
6 and consideration, and simultaneously to PG&E, a brief of no more than fifteen (15) pages,
7 along with any Supporting Documents. "Supporting Documents," as used in this Section 5, shall
8 mean and be limited to relevant technical data or analyses, and scientific/technical reports or
9 publications but shall not include any additional documentation (letters, briefs, declarations)
10 generated by the parties or any third party to support or oppose the appeal to the Panel. Any
11 brief or Supporting Documents submitted by SFHA after said thirty (30) day deadline shall not
12 be considered by the Panel. Absent a request from the Panel or a grant of permission from the
13 Panel, as provided for in Section 5.3.6, and subject to Section 5.3.6.3, SFHA shall not submit
14 any other documentation to the Panel.

15 5.3.4.2. PG&E's Submission. No later than thirty (30) days after
16 receipt of SFHA's submittal under Section 5.3.4.1, PG&E may submit to the Panel for its review
17 and consideration, and simultaneously to SFHA, a brief of no more than fifteen (15) pages,
18 along with any Supporting Documents. Any brief or Supporting Documents submitted by PG&E
19 after said thirty (30) day deadline shall not be considered by the Panel. Absent a request from
20 the Panel as provided for in Section 5.3.6, and subject to Section 5.3.6.3, PG&E shall not submit
21 any other documentation to the Panel.

22 5.3.5. Extension of Deadlines. The deadlines set in Section 5 may be modified
23 by a mutually agreed-upon stipulation between the Parties, without action by the Panel;
24 provided, however, a copy of any such stipulation shall be submitted to the Panel. The deadlines
25 set in this Section 5 may otherwise only be extended by the Panel for good cause, for a period
26 not to exceed ninety (90) days, upon written request of no more than three (3) pages
27 simultaneously sent to the other Party. The other Party may oppose the request through
28

1 submission to the Panel of an opposition of no more than three (3) pages, within seven (7) days
2 of that Party's receipt of the request for an extension.

3 5.3.6. Additional Document Submittals.

4 5.3.6.1. Further Briefing Requested by Panelists. Further briefing
5 and/or any additional existing data or information may be requested from either or both Parties
6 by joint written request of at least two Panelists who believe such data or information is
7 necessary to the determination of the subject appeal. In the event a Party is unwilling or unable
8 to comply with the Panel's request, the Party shall so state in writing to the Panel and include a
9 brief statement, of no more three (3) pages, of the Party's reason for not providing the requested
10 data or information. In the event a Party refuses to provide requested documents or information,
11 it shall not be required to provide any log of existing and known documents that are withheld or
12 the basis for the withholding.

13 5.3.6.2. Further Sampling/Data Analysis Requested by Panelists. In
14 addition, the Panel, by joint request of at least two Panelists, may request, but not order, that
15 PG&E undertake limited additional sampling or data analysis to assist the Panel's evaluation of
16 the subject appeal. Regardless of whether a request for additional sampling is refused, the
17 Panelists, and each of them, are prohibited from independently conducting such additional
18 sampling but not additional analyses of existing data.

19 5.3.6.3. Party Requests for Permission to Submit Additional
20 Documentation. Absent a request from the Panel pursuant to this Section 5, neither Party may
21 submit to the Panel any additional briefing or other documentation; provided, however, in the
22 event there are relevant data that have been generated or first made available since the Party's
23 previous submission to the Panel on the appeal at issue, a Party may request permission from the
24 Panel, through a brief of no more than three (3) pages, to submit such additional Supporting
25 Documents. The other Party may oppose such a request, through a brief of no more than three
26 (3) pages submitted to the Panel within seven (7) days of receipt of such request.

27 5.3.7. De Novo Review. The Panel shall undertake a De Novo review of the
28 documentation and information provided to the Panel in accordance with this Section 5. "De

Novo," as used herein, shall mean using their own judgment, in accordance with applicable laws and standards, as though reviewed for the first time. Neither SFHA nor PG&E shall bear any burden of proof on appeal to the Panel. The Board's approval of a Monitoring Only Remedy or MNR remedy proposal or NFA determination that is the subject of the appeal shall not be entitled to any presumption of correctness or incorrectness, but rather shall be considered in light of the facts, technical data and information, applicable law and the terms of the Consent Decree.

5.3.8. Scope of Panel Role. Subject to certain restrictions on appeals to the Panel as specifically provided in Section 4, the sole determination within the Panel's purview shall be whether to accept or reject the Board's approval of the Monitoring Only Remedy, MNR remedy, or NFA determination that is the subject of the appeal, as provided for under this Consent Decree. Such determination shall be made in accordance with the decision of a majority of the Panel members. The Panel shall make no decision unless there is a quorum of three Panelists on the Panel to hear and decide the appeal. The fact that an applicable performance standard under Section 4 is not achieved in the post-remedy compliance monitoring phase does not mandate the Panel's rejection of the Board's approval of a Monitoring Only or MNR remedy, or a request for an NFA determination. If the Panel rejects the challenged Board approval, it may suggest, but it cannot require, any additional or alternative remedy.

5.3.9. Written Determination by Panel. The Panel shall be required to take reasonable steps to diligently and expeditiously review the documents and information submitted to the Panel, and to promptly issue a written determination to accept or reject the Board's approval of the Monitoring Only or MNR remedy proposal or request for NFA determination. The Panel shall issue a written determination, including the basis for its decision, and simultaneously send it to SFHA and to PG&E. Such Panel determination shall be deemed to be final and binding upon the Parties.

5.3.10. PG&E Work During Appeal. During the pendency of any Panel appeal, PG&E shall be entitled to act in accordance with the Board's determination unless and until overturned by the Panel. PG&E shall not, however, perform any physical work in the area that is the subject of the approval or determination from which an appeal is taken that would

1 substantially and materially interfere with the achievement of an alternative action in the event
2 the Board's determination is overturned (such as permanently closing or destroying any
3 groundwater monitoring or extraction wells).

4 5.3.11. Post-Appeal Actions. In the event the Panel rejects the Board's approval at
5 issue in the appeal, then no later than ninety (90) days from the Panel's decision, PG&E shall
6 notify SFHA and the Regional Board in writing of the remedy or remedies PG&E intends to
7 evaluate for the area that was the subject of the Panel's decision. PG&E will be required to
8 propose a different action to the Regional Board from the Monitoring Only or MNR remedy or
9 NFA determination that was rejected. In the event that PG&E's chosen remedy following a Panel
10 decision rejecting the subject Board approval is a Monitoring Only or MNR proposal, PG&E
11 shall submit such proposal to the Regional Board no later than six (6) months from the date of
12 the Panel's decision. In the event PG&E's chosen remedy is other than a Monitoring Only or
13 MNR proposal, PG&E shall submit to the Regional Board a RAP for such area no later than
14 twelve (12) months from the date of the Panel's decision.

15 5.3.12. PG&E Right of Appeal. Notwithstanding any other terms herein, PG&E
16 shall have the right, in accordance with applicable state laws and regulations, to appeal to the
17 State Water Board any rejection by the Regional Board of a proposed Monitoring Only or MNR
18 remedy, or a request for an NFA determination. In the event PG&E initiates such an appeal to
19 the State Water Board, and the term of this Consent Decree expires while that appeal by PG&E
20 is pending, SFHA's right to appeal any subsequent approval of a proposed Monitoring Only or
21 MNR remedy, or a request for an NFA determination by the State Water Board relating to
22 PG&E's appeal shall be preserved, along with the associated rights and obligations of the
23 Parties.

24 5.3.13. Transmittal Definitions. As used in the foregoing sections regarding
25 transmittals to be made in the Panel appeal process, "sent" or "send" means transmittal via email
26 to the addresses provided by a particular Party. "Receipt" or "received," as used herein, shall
27 mean the date on which the transmittal was sent to the Party in question, subject to confirmation
28 of delivery.

1 5.3.14. Exclusive Remedy. An appeal to the Panel shall be SFHA's sole and
 2 exclusive recourse to challenge the Board's approval of a Monitoring Only or MNR remedy
 3 proposal, or a request for NFA determination. SFHA expressly waives any right of
 4 administrative or judicial appeal under the state Water Code and related regulations with respect
 5 to such approvals. In addition, SFHA shall have no right of appeal to the Panel, and expressly
 6 waives and agrees not to pursue any right of administrative or judicial appeal, with respect to
 7 any other remedies approved by the Regional Board.

8 5.3.15. Fees and Costs on Appeal.

9 5.3.15.1. Panelist Fees. The reasonable fees for the services of each of
 10 the Panelists shall be paid by PG&E, subject to PG&E's timely receipt and review of invoices to
 11 be submitted by each of the Panelists to PG&E and to SFHA on a monthly basis. Such invoices
 12 shall include a description of work performed each date for which fees are sought, but shall not
 13 include information that would reveal the thought process(es) of a Panelist.

14 5.3.15.2. Attorney's/Expert's Fees. In the event SFHA prevails in an
 15 appeal to the Panel (i.e., the Panel rejects the decision of the Board at issue in the appeal), then
 16 SFHA shall be entitled to reimbursement of its reasonable attorneys' and expert fees incurred
 17 from and after submission by SFHA of a Notice of Appeal and solely in connection with such
 18 appeal and not for Compliance Monitoring. In the event there is a dispute as to the amount of the
 19 attorneys' or expert fees to be reimbursed, SFHA may make a motion to the Court to resolve
 20 such dispute.

21 **6. DISPUTE RESOLUTION.** If a dispute under this Consent Decree arises, other than an
 22 appeal to the Panel under Section 5, either Party can request a meet and confer within ten (10)
 23 business days of receiving written notification from the other Party of a request for a meeting to
 24 resolve the dispute. The notice shall set forth the nature of the dispute. The meet and confer
 25 under this Section 6 shall be limited to one four-hour meeting unless otherwise agreed by the
 26 Parties. In the event the meet and confer process has successfully resolved the dispute, then
 27 within sixty (60) days following its receipt of invoices, PG&E shall reimburse SFHA's
 28 reasonable attorney's and expert's fees incurred for participation in the meet and confer meeting,

1 using the wire instructions in Section 3.5, provided, however, the total of the fees to be
 2 reimbursed for each such meet and confer shall be capped at Five Thousand Dollars (\$5,000). If
 3 the Parties fail to meet and confer or if the meet and confer does not resolve the issue, then the
 4 Parties shall each be entitled to bring a motion before the United States District Court for the
 5 Northern District of California, for the limited purpose of enforcing or modifying the terms of
 6 this Consent Decree, and will be entitled to seek attorney's fees and costs under Section 11.12.

7 **7. SUBMISSION OF CONSENT DECREE TO U.S. EPA/DOJ.** Within three (3)
 8 business days of receiving all of the Parties' signatures to this Consent Decree, SFHA shall
 9 submit this Consent Decree to the U.S. Department of Justice ("DOJ") and the U.S. EPA for
 10 agency review consistent with 40 C.F.R. §135.5. The agency review period expires forty-five
 11 (45) calendar days after receipt by the DOJ, evidenced by correspondence from DOJ
 12 establishing the review period. In the event DOJ or U.S. EPA comments negatively on the
 13 provisions of this Consent Decree, the Parties agree to meet and confer to attempt to resolve the
 14 issues raised by DOJ or U.S. EPA, as applicable.

15 **8. DISMISSAL OF COMPLAINT.** Within ten (10) calendar days following the
 16 expiration of the forty-five (45) day agency review period, the Parties shall submit a stipulation
 17 and proposed order to the Court to (a) request the approval and entry of this Consent Decree and
 18 (b) request dismissal of SFHA's claims (but not Clarke's claims) in this action in their entirety
 19 with prejudice. Such dismissal shall not affect the rights and obligations of the Parties under this
 20 Consent Decree, nor shall it affect the power of the Court to enforce this Consent Decree.

21 **9. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

22 9.1. **SFHA's Releases and Waivers.** This Consent Decree is a full, final, and binding
 23 resolution between SFHA, acting on behalf of itself, and its present and future members,
 24 officers, directors, and each of their respective agents, representatives, heirs, beneficiaries,
 25 executors, administrators, attorneys, insurers, successors and assigns, on the one hand ("SFHA
 26 Releasers"), and PG&E and its past, present and future agents, representatives, employees,
 27 officers, directors, affiliates, parents, subsidiaries, partners, predecessors in interest, related
 28

1 entities, attorneys, insurers, successors and assigns ("Defendant Releasees"), on the other hand,
2 of all claims that were asserted by the SFHA against PG&E in the Notice and the First Amended
3 Complaint, including, without limitation, claims under RCRA, the CWA, and state statutory and
4 common laws.

5 9.2. Without limiting the generality of the foregoing, SFHA Releasors, and each of
6 them, hereby release, waive and forever discharge Defendant Releasees from any and all manner
7 of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
8 agreements, promises, liabilities, damages, charges, losses, costs, expenses, attorneys' fees and
9 expert fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
10 now or in the future, arising from or relating to the MIA, PG&E's alleged ownership and
11 operation of any portion of the Former MGPs or Former MGP Sites, and any alleged release of
12 hazardous substances, any alleged handling, storage, treatment, transportation or disposal of
13 solid or hazardous wastes, any alleged discharge of pollutants, or the alleged presence of
14 hazardous substances, hazardous or solid wastes, pollutants or contaminants at, under or
15 emanating from Former MGP Sites or Former MGPs. Notwithstanding the foregoing, this
16 release and waiver shall not include, and shall have no effect upon, any claim by SFHA that
17 PG&E breached this Consent Decree, any action by SFHA to enforce this Consent Decree, any
18 claim by SFHA arising out of an MGP other than the Former MGPs, or any claim by SFHA
19 arising out of an MGP site other than the Former MGP Sites (collectively, "SFHA's Excepted
20 Claims").

21 9.2.1.1. SFHA Releasors (except for SFHA's attorneys), and each of
22 them, shall not institute, participate or assist (for example, by providing financial assistance,
23 personnel time, advice or support), directly or indirectly, in any suits, claims or actions against
24 any Defendant Releasees with regard to the claims released and waived under this Section 9,
25 unless such action is to enforce this Consent Decree. By execution of its approval as to the form
26 of this Consent Decree, Gross & Klein agree that neither Gross & Klein, Stuart G. Gross,
27 Benjamin H. Klein, nor any firm with which they are affiliated, nor any attorney working at said
28

1 law firm, shall represent any past members of SFHA or any other herring fisherman or herring
2 association with respect to the claims waived and released by the SFHA Releasors.

3 9.3. With respect to the foregoing waivers and releases in this Section 9, SFHA
4 Releasors, and each of them, hereby specifically waive any and all rights and benefits which any
5 of them now has, or in the future may have, conferred by virtue of the provisions of Section
6 1542 of the California Civil Code, which provides as follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
8 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
9 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
10 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
11 SETTLEMENT WITH THE DEBTOR.

Initials: MR

12 9.4. **PG&E's Release and Waiver.** PG&E, and its past, present and future agents,
13 representatives, employees, officers, directors, affiliates, parents, subsidiaries, partners,
14 predecessors in interest, related entities, attorneys, insurers, successors, and assigns ("Defendant
15 Releasors") hereby releases, waives and forever discharges SFHA and its current and former
16 members, officers, directors, agents, representatives, heirs, beneficiaries, executors,
17 administrators, and attorneys, and their respective successors and assigns, from any and all
18 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
19 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees
20 and expert fees, of any nature whatsoever, known or unknown, in law or equity, fixed or
21 contingent, now or in the future, relating to or arising from the Notice, the First Amended
22 Complaint, and the MIA. Notwithstanding the foregoing, this release and waiver shall not
23 include, and shall have no effect upon, any action by PG&E to enforce this Consent Decree, any
24 claim by PG&E that SFHA has breached this Consent Decree, or any rights or defenses relating
25 to any of SFHA's Excepted Claims (PG&E's Excepted Claims").

26 9.5. With respect to the foregoing waivers and releases in this Section 9, Defendant
27 Releasors, and each of them, hereby specifically waive any and all rights and benefits which any
28 of them now has, or in the future may have, conferred by virtue of the provisions of Section
1542 of the California Civil Code, which provides as follows:

[PROPOSED] REVISED CONSENT DECREE BETWEEN THE PLAINTIFF SAN FRANCISCO HERRING ASSOCIATION
AND DEFENDANTS; Case No. 14-cv-04393 WHO (JCS)

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
 2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
 3 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
 4 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
 5 SETTLEMENT WITH THE DEBTOR.

Initials: MAP

6 9.6 Notwithstanding anything to the contrary in this Consent Decree, the waivers
 7 and releases contained in Section 9 shall survive the termination of this Consent Decree.

10. NOTICES

8 10.1. Unless otherwise specified herein, all correspondence and notices required by this
 9 Consent Decree shall be in writing and, to the extent feasible, be sent via electronic mail
 10 transmission to the e-mail addresses listed below or, if electronic mail transmission is not
 11 feasible, personally delivered or sent by first-class, registered or certified mail, return receipt
 12 requested, or by overnight courier, to the following addresses:

13 For SFHA to:

14 Matt Ryan, President
 15 5145 Graveline Rd.
 16 Bellingham, WA 98226
 email: mryan50@comcast.net

17 with a copy (which shall not constitute notice) to:

18 Stuart G. Gross
 19 Gross & Klein LLP
 20 The Embarcadero
 21 Pier 9, Suite 100
 San Francisco, CA 94111
 email: sgross@grosskleinlaw.com

22 For PG&E to:

23 Kevin M. Sullivan
 24 Pacific Gas and Electric Company
 77 Beale Street, B28P
 25 San Francisco, CA 94105
 email: Kevin.M.Sullivan@pge.com

26 with a copy (which shall not constitute notice) to:

27 Pacific Gas and Electric Company
 28 Managing Counsel, Litigation
 77 Beale Street, Mail Code B30A, San Francisco, CA 94120-7442 (by hand-delivery)

P.O. Box 7442, San Francisco, CA 94120-7442 (by mail)
email: Elizabeth.Collier@pge.com

Any Party may, from time to time, specify in writing to the other Parties a change of address or addressee to which all notices and other communications shall be sent.

11. MISCELLANEOUS PROVISIONS

11.1. **Integration.** Except for any agreements that may be entered into in writing by and between the Parties concurrently with this Consent Decree, this Consent Decree contains the sole and entire agreement between the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged into this Consent Decree.

11.2. **Governing Law.** Except as otherwise expressly provided in this Consent Decree, the terms of this Consent Decree shall be governed by, and interpreted and enforced in accordance with, the laws of the State of California.

11.3. **Effective Date.** This Consent Decree shall not be effective until it is approved and entered by the Court, in which case it shall be effective as of the date it is entered ("Effective Date"). If the Court disapproves or otherwise declines to approve and enter this Consent Decree, the Parties shall meet and confer as to whether to modify the terms of this Consent Decree to address the Court's concerns. If the Parties do not agree, in principle, on a modified consent decree within thirty (30) days after the Court enters its order disapproving this Consent Decree, then this Consent Decree shall automatically be null and void, and this action shall proceed on its normal course.

11.4. **Retention of Jurisdiction.** This Court shall retain jurisdiction over this matter for the Term of this Consent Decree to implement, modify, and enforce this Consent Decree.

11.5. **Modification.** This Consent Decree may not be modified or amended except by further written stipulation of the Parties and approval of the Court, or by further order of the Court.

11.6. **Construction.** The language in all parts of this Consent Decree, unless otherwise stated, shall be construed according to its plain and ordinary meaning. The captions, paragraph headings, and Table of Contents used in this Consent Decree are for reference only and shall not

GROSS & KLEIN LLP
THE EMBARCADERO
PIER 9, SUITE 100
SAN FRANCISCO, CA 94111

1 affect the construction of this Consent Decree. The Parties have negotiated this Consent Decree
 2 and agree that it shall not be construed against the Party preparing it, but shall be deemed to
 3 have been jointly prepared by the Parties, and any uncertainty and ambiguity shall not be
 4 interpreted against any one Party.

5 **11.7. Term of Consent Decree.** This Consent Decree shall continue in effect for a
 6 term of ten (10) years from the Effective Date ("Term"), at which time the Consent Decree, and
 7 all obligations under it, shall automatically terminate.

8 **11.8. Severability.** If any one or more of the provisions of this Consent Decree shall
 9 for any reason be held invalid, illegal or unenforceable in any respect, that invalidity, illegality
 10 or unenforceability shall not affect any other provision herein, and this Consent Decree shall be
 11 construed as if the invalid, illegal or unenforceable provision had never been included, provided,
 12 however, in no event shall any Party be deprived a material consideration by operation of this
 13 provision.

14 **11.9. Assignment.** All of the rights, duties, and obligations contained in this Consent
 15 Decree shall inure to the benefit of and be binding upon each of the Parties and their respective
 16 successors and assigns.

17 **11.10. Authority to Sign.** The undersigned representatives for the SFHA and for PG&E
 18 each represent and warrant that he/she has read, understood and agreed to all of the terms and
 19 conditions of this Consent Decree and is authorized by the Party that he/she represents to enter
 20 into and execute this Consent Decree on its behalf.

21 **11.11. Counterparts/Signatures.** This Consent Decree may be executed in one or more
 22 counterparts which, taken together, shall be deemed to constitute one and the same document.
 23 The Parties' signatures to this Consent Decree transmitted by facsimile or electronic mail
 24 transmission shall be deemed binding.

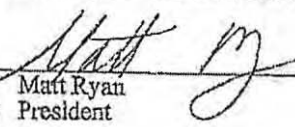
25 **11.12. Attorney's Fees For Enforcement or Modification of Consent Decree.** In the
 26 event any action is taken by any Party to enforce or modify this Consent Decree (which does not
 27 include any appeal to the Panel under Section 5), reasonable attorney's fees and costs (including
 28

expert fees) shall be awarded in accordance with the standard established by § 505 of the Clean Water Act, 33 U.S.C. § 1365(d), and applicable case law interpreting that standard.

The Parties hereto enter into this Consent Decree and submit it to the Court for its approval and entry as a final judgment.

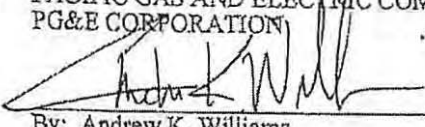
DATED: 9-15-18

SAN FRANCISCO HERRING ASSOCIATION

By: 
Title: President

DATED: 9/18/18

PACIFIC GAS AND ELECTRIC COMPANY and
PG&E CORPORATION

By: 
Title: VP Land & Environmental Management

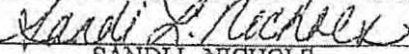
GROSS & KLEIN LLP
THE EMBARCADERO
FIES 9, SUITE 100
SAN FRANCISCO, CA 94111

APPROVED AS TO FORM:


GROSS & KLEIN LLP

By: 
STUART G. GROSS
ATTORNEYS FOR SAN FRANCISCO HERRING
ASSOCIATION

ALLEN MATKINS LECK GAMBLE MALLORY & NATSIS LLP

By: 
SANDI L. NICHOLS
ATTORNEYS FOR PACIFIC GAS AND ELECTRIC
COMPANY AND PG&E CORPORATION

WFBM, LLP

By: 
SCOTT D. MROZ
ATTORNEYS FOR PACIFIC GAS AND ELECTRIC
COMPANY AND PG&E CORPORATION

[PROPOSED] REVISED CONSENT DECREE BETWEEN THE PLAINTIFF SAN FRANCISCO HERRING ASSOCIATION
AND DEFENDANTS; Case No. 14-cv-04393 WHO (JCS)

55

1 **APPROVED AND SO ORDERED.**

2 Dated: September 27, 2018

By: 

The Honorable William H. Orrick
United States District Court Judge

GROSS & KLEIN LLP
THE EMBARCADERO
PIER 9, SUITE 100
SAN FRANCISCO, CA 94111

EXHIBIT 1



LEGEND

APPROXIMATE LIMITS OF HISTORICAL
 MANUFACTURED GAS PLANT (MGP)

NOTES

1. ALL LOCATIONS ARE APPROXIMATE.
2. AERIAL IMAGERY SOURCE: CITY AND COUNTY OF SF, 2014



0 200 400
 SCALE IN FEET

HALEX
 ALDRICH

PACIFIC GAS AND ELECTRIC COMPANY (PG&E)
 FORMER NORTH BEACH MANUFACTURED GAS PLANT SITE
 SAN FRANCISCO, CALIFORNIA

FORMER NORTH BEACH MGP SITE

JULY 2018

EXHIBIT 1

EXHIBIT 2



APPROXIMATE LIMITS OF HISTORICAL
MANUFACTURED GAS PLANT (MGP)

1. ALL LOCATIONS ARE APPROXIMATE.
2. AERIAL IMAGERY SOURCE: CITY AND COUNTY OF SF, 2014



0 200 400
SCALE IN FEET

HAILEY ALDRICH
PACIFIC GAS AND ELECTRIC COMPANY (PG&E)
FORMER FILLMORE MANUFACTURED GAS PLANT SITE
SAN FRANCISCO, CALIFORNIA

FORMER FILLMORE MGP SITE

JULY 2018

EXHIBIT 2

EXHIBIT 3

EXECUTION VERSION - CONSENT DECREE
SAN FRANCISCO HERRING ASSOCIATION, et al., v. PACIFIC GAS AND ELECTRIC COMPANY, et al. (N.D. Cal. Case No. 3:14-cv-04393-WHO (JCS))



LEGEND

HISTORICAL MANUFACTURED GAS PLANT (MGP) SITE
BOUNDARY

NOTES

1. ALL LOCATIONS ARE APPROXIMATE.
2. AERIAL IMAGERY SOURCE: CITY AND COUNTY OF SF, 2014



0 150 300
SCALE IN FEET

HALEY ALDRICH
PACIFIC GAS AND ELECTRIC COMPANY (PG&E)
FORMER BEACH STREET MANUFACTURED GAS PLANT SITE
SAN FRANCISCO, CALIFORNIA

FORMER BEACH STREET MGP SITE

JULY 2018

EXHIBIT 3

EXHIBIT 4

EXECUTION VERSION - CONSENT DECREE
 SAN FRANCISCO HERRING ASSOCIATION, et al., v. PACIFIC GAS AND ELECTRIC COMPANY, et al.
 (N.D. Cal. Case No. 3:14-cv-04393-WHO (JCS))

EXHIBIT 4: List of "EPA PAH-34" for Analytical Measurement to Quantify "Total Trigger PAHs"

PAH	CAS*	Molecular Weight (µg/mol)
Naphthalene	91203	128.17
C1-Naphthalenes	-	142.20
Acenaphthylene	208968	152.2
Acenaphthene	83329	154.21
C2-Naphthalenes	-	156.23
Fluorene	86737	166.22
C3-Naphthalenes	-	170.25
Anthracene	120127	178.12
Phenanthrene	85018	178.23
C1-Fluorenes	-	180.25
C4-Naphthalenes	-	184.28
C1-Phenanthrene/anthracenes	-	192.26
C2-Fluorenes	-	194.27
Pyrene	129000	202.26
Fluoranthene	206440	202.26
C2-Phenanthrene/anthracenes	-	206.29
C3-Fluorenes	-	208.30
C1-Pyrene/fluoranthenes	-	216.29
C3-Phenanthrene/anthracenes	-	220.32
Benz(a)anthracene	56553	228.29
Chrysene	218019	228.29
C4-Phenanthrenes/anthracenes	-	234.23
C1-Benzanthracene/chrysenes	-	242.32
Benzo(a)pyrene	50328	252.31
Perylene	198550	252.31
Benzo(e)pyrene	192972	252.32
Benzo(b)fluoranthene	205992	252.32
Benzo(k)fluoranthene	207089	252.32
C2-Benzanthracene/chrysenes	-	256.23
Benzo(ghi)perylene	191242	276.23
C3-Benzanthracene/chrysenes	-	270.36
Indeno(1,2,3-cd)pyrene	193395	276.23
Dibenz(a,h)anthracene	53703	278.35
C4-Benzanthracene/chrysenes	-	284.38

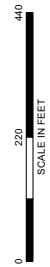
* For C# PAHs CAS is not available.

EXHIBIT 5



- UPLAND BORING
- ⊕ PROPOSED GRAB GROUNDWATER SAMPLING LOCATION
- ▨ PIER 39
- ▤ PIER 39 HARBOR
- ▤ FORMER BEACH STREET MANUFACTURED GAS PLANT (MGP)

1. AERIAL IMAGERY SOURCE: CITY AND COUNTY OF SF, 2014



HALEY ALDRICH
 PACIFIC GAS AND ELECTRIC COMPANY (PG&E)
 SAN FRANCISCO, CALIFORNIA

PIER 35 TO JONES ST. SOIL BORING/
 GRAB GROUNDWATER SAMPLING MAP

JULY 2018

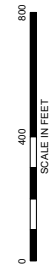
EXHIBIT 5

EXHIBIT 6



- MONITORING WELL
- AGREED UPON LOCATION OF NEW MONITORING WELL
- APPROXIMATE LIMITS OF HISTORICAL MANUFACTURED GAS PLANT (MGP)

- 1. FINAL WELL LOCATIONS MAY BE ADJUSTED TO ACCOUNT FOR SUBSURFACE UTILITIES AND/OR ANY OTHER ACCESS CONSTRAINTS.
- 2. AERIAL IMAGERY SOURCE: CITY AND COUNTY OF SF, 2014



HALEY ALDRICH
PACIFIC GAS AND ELECTRIC COMPANY (PG&E)
SAN FRANCISCO, CALIFORNIA

100' BAND GROUNDWATER
MONITORING WELL MAP -
BAKER ST. TO LAGUNA ST.

JULY 2018

EXHIBIT 6

EXHIBIT 7



- MONITORING WELL
- PROPOSED MONITORING WELL
- PIER 39
- PIER 39 HARBOR
- FORMER BEACH STREET MANUFACTURED GAS PLANT (MGP)

1. AERIAL IMAGERY SOURCE: CITY AND COUNTY OF SF, 2014

HALEY ALDRICH
 PACIFIC GAS AND ELECTRIC COMPANY (PG&E)
 SAN FRANCISCO, CALIFORNIA

100' BAND GROUNDWATER
 MONITORING WELL MAP -
 JONES ST. TO PIER 39

JULY 2018

EXHIBIT 7

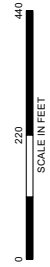


EXHIBIT 8



1. ALL LOCATIONS ARE APPROXIMATE.

2. AERIAL IMAGERY SOURCE: CITY AND COUNTY OF SF, 2014

● SEDIMENT STATION

HALEY ALDRICH

PACIFIC GAS AND ELECTRIC COMPANY (PG&E)
 SAN FRANCISCO, CALIFORNIA

**FORT MASON OFFSHORE SEDIMENT
 SAMPLING LOCATION MAP**

JULY 2018

EXHIBIT 8

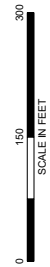
EXHIBIT 9



1. ALL LOCATIONS ARE APPROXIMATE.

2. AERIAL IMAGERY SOURCE: CITY AND COUNTY OF SF, 2014

● SEDIMENT STATION



HALEY ALDRICH
 PACIFIC GAS AND ELECTRIC COMPANY (PG&E)
 SAN FRANCISCO, CALIFORNIA

NEW MARINA OFFSHORE SEDIMENT
 SAMPLING LOCATION MAP

JULY 2018

EXHIBIT 9

EXHIBIT 10



1. ALL LOCATIONS ARE APPROXIMATE.

○ POTENTIAL STEP-OUT SEDIMENT STATION

2. AERIAL IMAGERY SOURCE: CITY AND COUNTY OF SF, 2014



A vertical scale bar labeled "SCALE IN FEET" with markings at 0, 150, and 300 feet.

HALEY ALDRICH
PACIFIC GAS AND ELECTRIC COMPANY (PG&E)
SAN FRANCISCO, CALIFORNIA

ILLUSTRATIVE EXAMPLE OF NEW MARINA OFFSHORE SEDIMENT STEP-OUT SAMPLING SCENARIO

JULY 2018

EXHIBIT 10

EXHIBIT 11

EXECUTION VERSION - CONSENT DECREE

SAN FRANCISCO HERRING ASSOCIATION, et al., v. PACIFIC GAS AND ELECTRIC COMPANY, et al. (N.D. Cal. Case No. 3:14-cv-04393-WHO (JCS))

Exhibit 11 –Basis for Developing a Conservative Proxy for PWeq

This Exhibit describes how bulk sediment PAH data will be used to predict Total PAH (sum of the EPA-34 PAHs) concentrations in pore water, to determine if the Chemical Performance Standard of 15 µg/L Total PAH has been exceeded. If a statistically acceptable correlation ($R^2 > 0.8$) between bulk sediment characteristics and pore water EPA PAH-34 concentrations cannot be demonstrated, the conservative method outlined below (conservative proxy) will be used to estimate total EPA PAH-34 concentrations in sediment pore water using total PAH concentrations in bulk sediment.

Data collected by PG&E during 2017 as part of the Outside East Harbor Shallow Sediment Investigation will be included in the evaluation together with additional samples collected from the Pier 39 to 45 sediment investigation as described below.

Pier 39 to 45 sediment Sampling Locations. Twenty (20) stations out of an existing 95 surface sediment sampling stations where bulk sediment sampling has already occurred will be sampled for pore water and co-located bulk sediment. The sampling stations are not geographically equally distributed but instead include stations in areas with anticipated bulk sediment concentrations distributed throughout the range of total Regional Monitoring Program (RMP) PAH-25 concentrations in current surface sediments. The following summarizes the number of stations sampled within various surface sediment total PAH-25 concentration ranges, based on the previous sediment sampling:

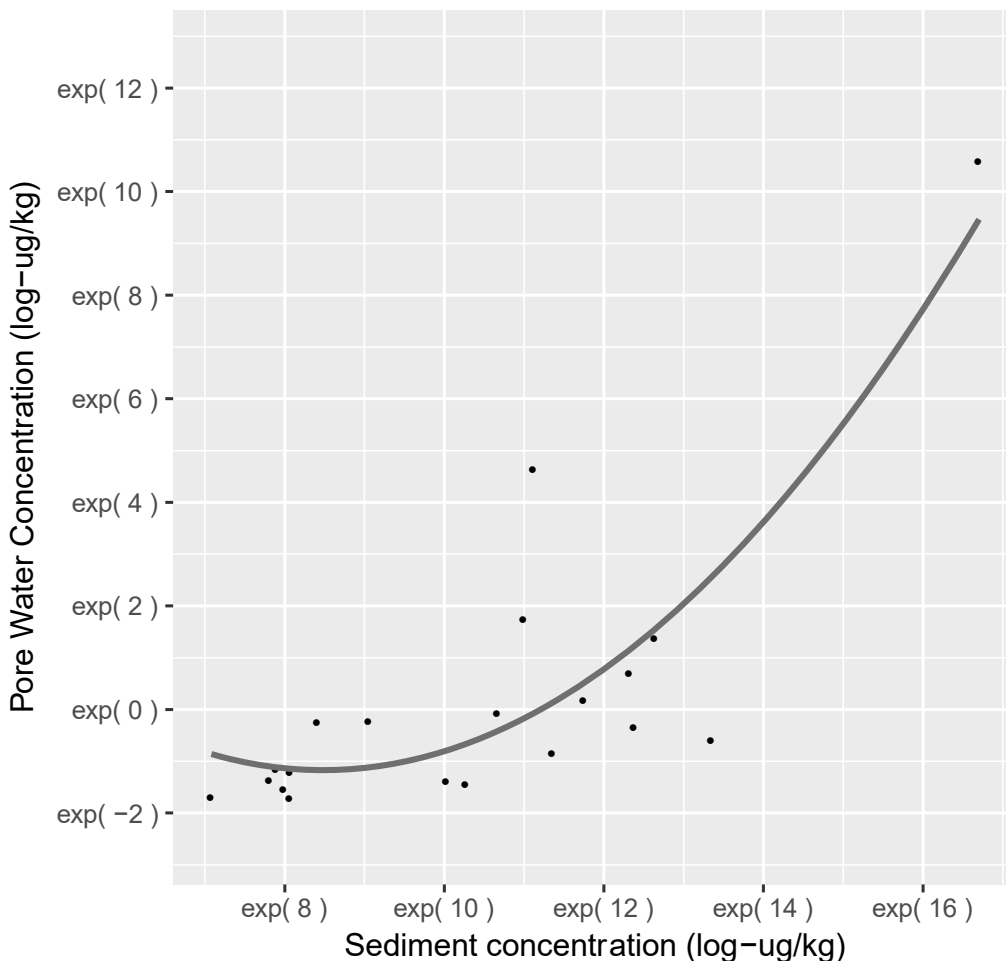
- 1 station < 4.5 mg/kg [4.5 mg/kg = SF Bay Ambient for “muddy” sediment]
- 1 station between 4.5 and 10 mg/kg
- 3 stations between 10 and 30 mg/kg
- 4 stations between 30 and 44.8 mg/kg [44.8 mg/kg = ERM, screening level above which adverse effects to invertebrates are considered likely]
- 5 stations between 44.8 and 100 mg/kg
- 6 stations > 100 mg/kg

Outside East Harbor Shallow Sediment Investigation. Below is an example plot of the 20 pairs of outside East Harbor data and on a log-log scale, without discarding any data pairs as potential outliers, which demonstrates that there is a somewhat strong relationship between bulk sediment PAH concentrations and pore water PAH concentrations. This relationship is modeled below with a simple 2nd-order polynomial to fit the curvature in the signal (how sediment concentrations change as a function of pore water concentrations). The plot below shows a scatter plot between pore water and bulk sediment PAH concentrations on the log-log scale. The R^2 value for this particular model is 0.71

EXECUTION VERSION - CONSENT DECREE

SAN FRANCISCO HERRING ASSOCIATION, et al., v. PACIFIC GAS AND ELECTRIC COMPANY, et al. (N.D. Cal. Case No. 3:14-cv-04393-WHO (JCS))

Pore Water vs. Sediment Concentrations, log-log



This limited data set does not result in a correlation $R^2 > 0.8$ but suggests that a larger data set might produce a higher coefficient of determination. Therefore, additional samples will be collected and used to determine if a statistically acceptable correlation exists.

Dataset for Developing a Conservative Proxy for PW_{eq}. The dataset to be evaluated will include twenty (20) sediment-pore water sample pairs from twenty (20) stations collected in the Outside East Harbor Shallow Sediment Investigation. The dataset will also include sixty (60) additional sample pairs collected from twenty (20) stations at Pier 39 to 45 (3-samples at three depth intervals, 0-0.5', 1-1.5' and 2-3', from 20 locations). Sediment-pore water sample pairs will be excluded from evaluation for any of the following reasons: 1) presence of NAPL in bulk sediment; and 2) filtered pore water (from the Outside East Harbor filtration comparison).

EXECUTION VERSION - CONSENT DECREE

SAN FRANCISCO HERRING ASSOCIATION, et al., v. PACIFIC GAS AND ELECTRIC COMPANY, et al. (N.D. Cal. Case No. 3:14-cv-04393-WHO (JCS))

The following process will be used to determine a relationship between bulk sediment concentrations and pore water, and provides a conservative estimator should it be necessary:

1. Use statistical computing software to find a best fit model for 1st and 2nd order polynomials (i.e., linear or quadratic) on a log-log scale with Ordinary Least Squares or Maximum Likelihood algorithms on all paired bulk and pore water data without outlier removal.
2. Calculate the R^2 model for the regression models and select the regression model with the highest R^2 coefficient-of-determination.
3. If the highest R^2 value for the regression models is at least 0.8, select the regression model with the highest R^2 value as sufficient for estimating PW_{eq}.
4. If the highest R^2 value for the regression line models is below 0.8, then:
 - a. Apply 95% confidence intervals on the best linear fit, exclude data points beyond the 95% confidence intervals, and re-calculate the R^2 model for the regression lines with the outliers excluded.
 - b. If the highest R^2 value for the regression models, excluding 95% confidence interval outliers, is at least 0.8, select the regression model with the highest R^2 value as sufficient for estimating PW_{eq}.
5. If the highest R^2 value for the regression models is still below 0.8, then:
 - a. Identify the bulk concentration that equates to a pore water concentration of Total Trigger PAHs of 15 $\mu\text{g/L}$ for each regression model.
 - b. Limit the dataset of bulk sediment concentrations to values two orders of magnitude less than and greater than the bulk concentration that equates to a pore water concentration of Total Trigger PAHs of 15 $\mu\text{g/L}$ for each regression model, then perform steps 1 through 3 on the Trimmed Dataset.
 - c. If the highest R^2 value for any of the regression models is at least 0.75, select the regression model with the highest R^2 value as sufficient for estimating PW_{eq}.
 - d. If the highest R^2 value determined with the regression models for the Trimmed Dataset resulting from 5.b. ("Trimmed Dataset") is below 0.75, then:
 - i. Select the nonlinear regression model from 5.b with the highest R^2 value determined for the trimmed dataset, then:
 - ii. Calculate projected pore water Total Trigger PAHs ("Projected Pore Water") for all bulk sediment samples in the Trimmed Dataset with the highest R^2 value trimmed regression equation;
 - iii. Calculate a direct Conversion Factor ("CF") using the following equation: $\text{CF} = \text{Projected Pore Water concentration} / \text{bulk sediment concentration}$; and
 - iv. Select the 95th percentile of the CF dataset to calculate the PW_{eq} conservative proxy that may be used to estimate Total Trigger PAHs in pore water for bulk sediment with PAH concentrations.

EXHIBIT 12

EXECUTION VERSION - CONSENT DECREE

**SAN FRANCISCO HERRING ASSOCIATION, et al., v. PACIFIC GAS AND ELECTRIC COMPANY, et al.
(N.D. Cal. Case No. 3:14-cv-04393-WHO (JCS))**

EXHIBIT 12

Pore Water Sampling Protocol

This Exhibit describes a sediment pore water sampling and analysis protocol to be implemented as part of new offshore sediment investigations and related sediment monitoring performed under the terms of a consent decree

Pore Water Sampling and Analysis. At each pore water station, pore water samples will be collected from three depth intervals: 0 to 0.5, 1.0 to 1.5, and 2.0 to 3.0 feet below mudline. At each station, three pore water samples (one from each depth interval) will be collected simultaneously using an array of screened piezometers inserted into sediment through a metal plate with a minimum size of 18" square fitted with diaphragms to stabilize the sediment surface before penetration of the three piezometers. Three dedicated screen assemblies (screen size - 0.03- inch screen) will be fabricated for each station. The only components that are re-used are the metal plate, the weights, and the retrieval wires. The device includes three 1-inch diameter polyvinyl chloride (PVC) pipes which extend into the sediment, each with a 6-inch or 12-inch long slotted screen at the specified depth interval. The sampling screens will be isolated from the overlying surface water by an impermeable seal. The three sets of Teflon tubing will be connected to three separate peristaltic pumps on the sampling vessel. Low-flow sampling techniques will be used to gently purge the volume of water in the tubing prior to sample collection.

To minimize the chance of vertical pore water migration, all three sample intervals will be sampled simultaneously using low pumping rates to encourage horizontal flow. For each screened interval, after purging a single tubing volume, a small aliquot of pore water will be collected, and field parameters measured (temperature, salinity, dissolved oxygen, oxidation-reduction potential). A single 1-Liter sample will then be collected from each screened interval for analysis of PAHs and total organic carbon (TOC). When there is adequate sample volume, field parameters will be measured (temperature, salinity, dissolved oxygen, oxidation-reduction potential). An ambient sample of San Francisco Bay water will be collected from immediately above the sediment surface and measured for field parameters (temperature, salinity, dissolved oxygen, oxidation-reduction potential). Samples will be retained on ice under chain-of-custody until shipped to the analytical laboratory. Porewater samples will not be filtered; rather, the laboratory will flush from porewater samples visual particles that have settled in the separatory funnel.

Sediment Sampling and Analysis. After collection of the pore water samples, co-located sediment samples (0.0 to 0.5, 1.0 to 1.5, and 2.0 to 3.0 feet below mudline) will be collected from a short core, nominally 4 feet in length, advanced by pushing or gravity. The samples will be homogenized for aliquoting sediment into jars for PAH and TOC analysis. Sufficient remaining bulk sediment will be collected into zip-lock bags for grain size analysis.

EXHIBIT 13



EXHIBIT 14

EXECUTION VERSION - CONSENT DECREE

SAN FRANCISCO HERRING ASSOCIATION, et al., v. PACIFIC GAS AND ELECTRIC COMPANY, et al.
(N.D. Cal. Case No. 3:14-cv-04393-WHO (JCS))

EXHIBIT 14**List of "Sediment/Pore Water PAHs"**

Naphthalene*	C3-Phenanthrenes/Anthracenes
C1-Naphthalenes	C4-Phenanthrenes/Anthracenes
C2-Naphthalenes	1-Methylphenanthrene (1MP)*
C3-Naphthalenes	2-Methylphenanthrene (2MP)
C4-Naphthalenes	3-Methylphenanthrene (3MP)
2-Methylnaphthalene*	9/4-Methylphenanthrene (9MP)
1-Methylnaphthalene*	2-Methylanthracene (2MA)
2,6-Dimethylnaphthalene*	1-Methyl-7-isopropylphenanthrene (Retene)
2,3,5-Trimethylnaphthalene*	Fluoranthene*
Acenaphthylene*	Pyrene*
Acenaphthene*	C1-Fluoranthenes/Pyrenes
Biphenyl*	C2-Fluoranthenes/Pyrenes
Dibenzofuran	C3-Fluoranthenes/Pyrenes
Carbazole	C4-Fluoranthenes/Pyrenes
Fluorene*	1-Methylpyrene
C1-Fluorenes	2-Methylpyrene
C2-Fluorenes	4-Methylpyrene
C3-Fluorenes	Benzo(b)fluorene
Benzothiophene	Benzo(c)fluorene
C1-Benzo(b)thiophenes	Benzo(a)anthracene
C2-Benzo(b)thiophenes	Chrysene/Triphenylene*
C3-Benzo(b)thiophenes	C1-Chrysenes
C4-Benzo(b)thiophenes	C2-Chrysenes
Naphthobenzothiophene	C3-Chrysenes
C1-Naphthobenzothiophenes	C4-Chrysenes
C2-Naphthobenzothiophenes	Benzo(b)fluoranthene*
C3-Naphthobenzothiophenes	Benzo(j)+(k)fluoranthene**
C4-Naphthobenzothiophenes	Benzo(a)fluoranthene
Dibenzothiophene*	Benzo(e)Pyrene*
C1-Dibenzothiophenes	Benzo(a)Pyrene*
C2-Dibenzothiophenes	Perylene*
C3-Dibenzothiophenes	Indeno(1,2,3-cd)pyrene*
C4-Dibenzothiophenes	Dibenz(a,h)+(a,c)anthracene*
1-Methyldibenzothiophene (1MDT)	Benzo(g,h,i)perylene*
2/3-Methyldibenzothiophene (2MDT)	Bicyclic Aliphatic Hydrocarbons
4-Methyldibenzothiophene (4MDT)	Cis/Trans-Decalin
Anthracene*	C1-Decalins
Phenanthrene*	C2-Decalins
C1-Phenanthrenes/Anthracenes	C3-Decalins
C2-Phenanthrenes/Anthracenes	C4-Decalins

* Indicates constituents included in Regional Monitoring Program (RMP) PAH-25 list. PAHs (µg/kg dry wt), related heterocyclic aromatic hydrocarbons, and bicyclic aliphatic hydrocarbons - EPA Method 8270D-SIM (Modified) Note: dry wt for sediment, wet wt for tissues, ng/L for elutriates.

EXHIBIT 15

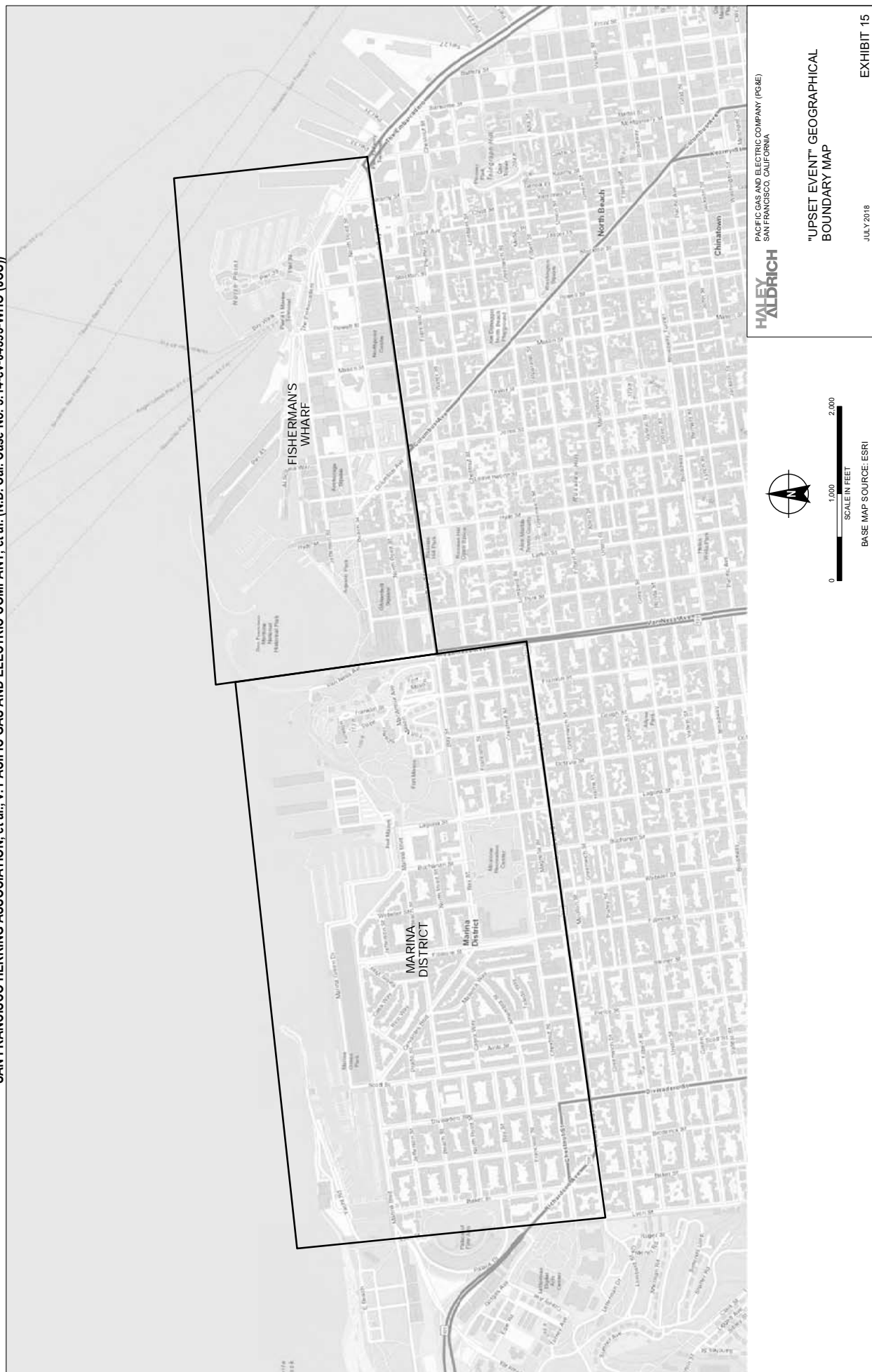


EXHIBIT 16

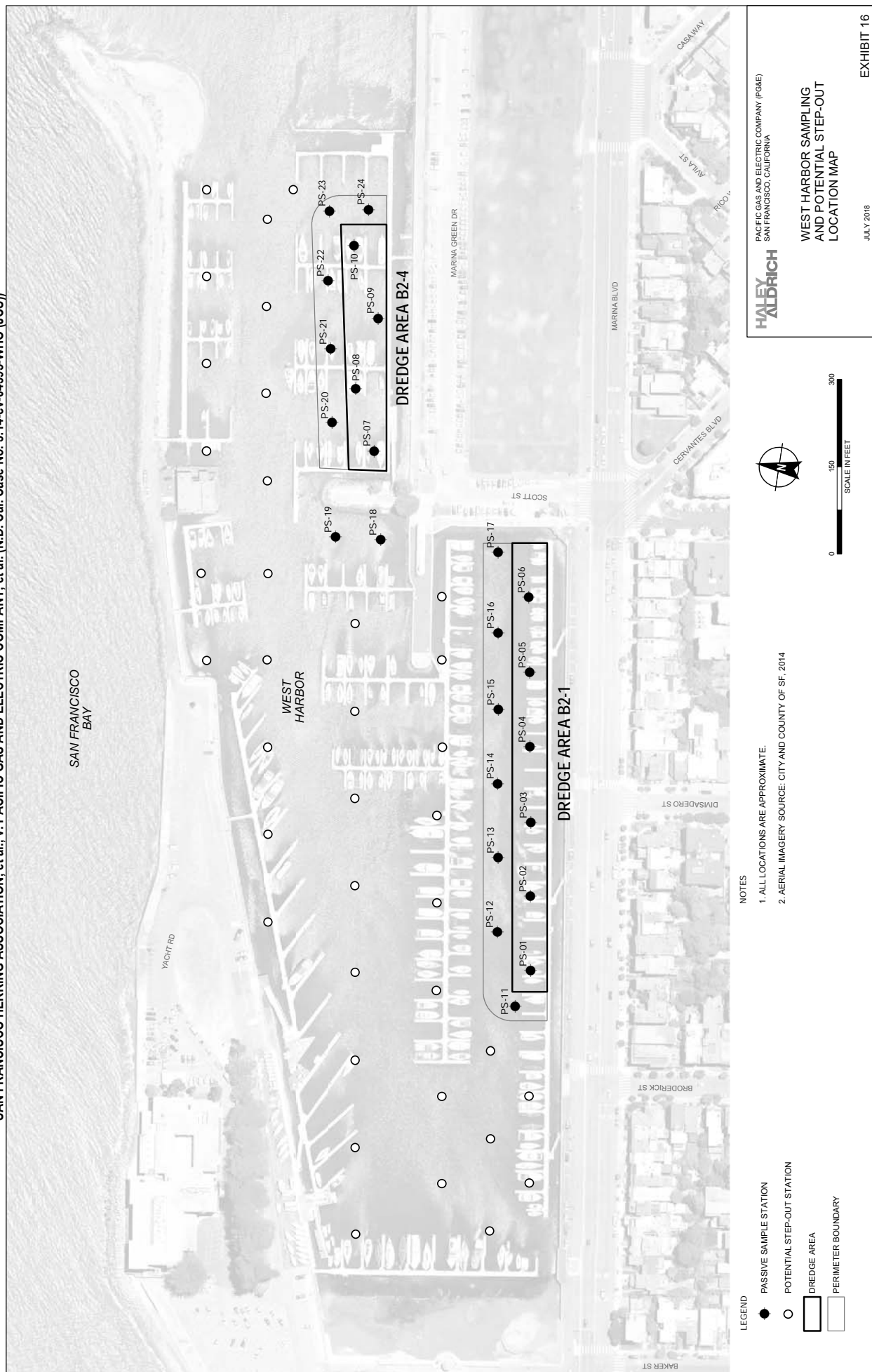


EXHIBIT 17

EXECUTION VERSION - CONSENT DECREE

SAN FRANCISCO HERRING ASSOCIATION, et al., v. PACIFIC GAS AND ELECTRIC COMPANY, et al.

(N.D. Cal. Case No. 3:14-cv-04393-WHO (JCS))

EXHIBIT 17

Locations and Screen Depth Intervals for Grab Groundwater Samples and Compliance Wells in 100' Band

Location ID	Screen Interval (feet bgs)		Status
	Top	Bottom	
Grab Groundwater Sample Locations shown in Exhibit 5:			
UB-12	10.0	12.0	To be sampled after Consent Decree is entered.
	19.0	21.0	
UB-13	10.0	12.0	To be sampled after Consent Decree is entered.
	19.0	21.0	
UB-14	10.0	12.0	To be sampled after Consent Decree is entered.
	18.5	20.5	
	23.0	25.0	
UB-15	12.0	14.0	To be sampled after Consent Decree is entered.
	18.0	20.0	
	23.0	25.0	
Between Baker Street and Scott Street (Locations shown in Exhibit 6 from west to east):			
MW13A	9.7	14.7	Existing well approved as 100' Band Compliance Well
MW13B	19.2	24.2	
MW14A	9.8	14.8	Existing well approved as 100' Band Compliance Well
MW14B	20.2	25.2	
MW15A	9.9	14.9	Existing well approved as 100' Band Compliance Well
MW15B	18.8	23.8	
MW16A	9.4	14.4	Existing well approved as 100' Band Compliance Well
MW16B	15.5	20.5	
Between Scott Street and Webster Street (Locations shown in Exhibit 6 from west to east):			
CMT05A	9.0	9.6	Existing well approved as 100' Band Compliance Well
CMT05B	16.8	17.4	
CMT05C	20.1	20.7	
MW17	10.3	15.3	Existing well approved as 100' Band Compliance Well
MW17B	--	--	Proposed location agreed, not installed. Screen interval TBD ^{1,2}
TBD (A)	--	--	Proposed location of well pair agreed, not installed. Location ID and screen interval TBD ^{1,2} . (A)=shallow interval; (B)=deeper
TBD (B)	--	--	
TBD (A)	--	--	Proposed location of well pair agreed, not installed. Location ID and screen interval TBD ^{1,2} . (A)=shallow interval; (B)=deeper
TBD (B)	--	--	
MW18	10.6	15.6	Existing well approved as 100' Band Compliance Well
MW18B	20.0	25.0	Agreed location and interval, not installed.
MW19	10.6	15.6	Existing well approved as 100' Band Compliance Well
MW19B	20.5	25.5	Agreed location and interval, not installed.
TBD (A)	--	--	Proposed location of well pair agreed, not installed. Location ID and screen interval TBD ^{1,2} . (A)=shallow interval; (B)=deeper
TBD (B)	--	--	
TBD (A)	--	--	Proposed location of well pair agreed, not installed. Location ID and screen interval TBD ^{1,2} . (A)=shallow interval; (B)=deeper
TBD (B)	--	--	
MW20	11.2	16.2	Existing well approved as 100' Band Compliance Well
MW20B	21.0	26.0	Agreed location and interval, not installed.

EXECUTION VERSION - CONSENT DECREE

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(N.D. Cal. Case No. 3:14-cv-04393-WHO (JCS))

EXHIBIT 17

Locations and Screen Depth Intervals for Grab Groundwater Samples and Compliance Wells in 100' Band

Location ID	Screen Interval (feet bgs)		Status
	Top	Bottom	
Between Webster Street and Laguna Street (Locations shown in Exhibit 6 from west to east):			
TBD (A)	--	--	Proposed location of well pair agreed, not installed. Location ID and screen interval TBD ^{1,2} . (A)=shallow interval; (B)=deeper
TBD (B)	--	--	
TBD (A)	--	--	Proposed location of well pair agreed, not installed. Location ID and screen interval TBD ^{1,2} . (A)=shallow interval; (B)=deeper
TBD (B)	--	--	
TBD (A)	--	--	Proposed location of well pair agreed, not installed. Location ID and screen interval TBD ^{1,2} . (A)=shallow interval; (B)=deeper
TBD (B)	--	--	
TBD (A)	--	--	Proposed location of well pair agreed, not installed. Location ID and screen interval TBD ^{1,2} . (A)=shallow interval; (B)=deeper
TBD (B)	--	--	
MW21A	7.3	12.3	Existing well approved as 100' Band Compliance Well
MW21B	21.3	26.3	
MW06A	9.0	11.0	Existing well approved as 100' Band Compliance Well
MW06B	13.0	15.0	
MW06C	17.0	19.0	
MW02A	9.0	11.0	Existing well approved as 100' Band Compliance Well
MW02B	17.0	19.0	
MW02C	24.0	26.0	
TBD (A)	--	--	Proposed location of well pair agreed, not installed. Location ID and screen interval TBD ^{1,2} . (A)=shallow interval; (B)=deeper
TBD (B)	--	--	
TBD (A)	--	--	Proposed location of well pair agreed, not installed. Location ID and screen interval TBD ^{1,2} . (A)=shallow interval; (B)=deeper
TBD (B)	--	--	
MW08A	9.0	15.0	Existing well approved as 100' Band Compliance Well
MW08BR	18.3	20.2	
MW08C	25 - 27	29 - 30	Agreed location; not installed, interval pending ^{2,3}
MW09A	9.0	15.0	Existing well approved as 100' Band Compliance Well
MW09B	20.0	22.0	
(Locations shown in Exhibit 7 from west to east):			
TBD (A)	--	--	Proposed location of well pair agreed, not installed. Location ID and screen interval TBD ^{1,2} . (A)=shallow interval; (B)=deeper
TBD (B)	--	--	
MW01	7.0	11.8	Existing well approved as 100' Band Compliance Well
MW02	8.0	12.8	Existing well approved as 100' Band Compliance Well
MW03	9.0	13.8	Existing well approved as 100' Band Compliance Well
TBD (A)	--	--	Proposed location of well pair agreed, not installed. Location ID and screen interval TBD ^{1,2} . (A)=shallow interval; (B)=deeper
TBD (B)	--	--	

Abbreviations:

bgs: below ground surface.

TBD: To Be Determined after Consent Decree is entered.

Notes:

1. Exploratory boring to be drilled after Consent Decree is entered.
2. Well screen interval to be based on boring log and criteria set forth in Consent Decree paragraph 4.2.3.2.
3. Well screen will be designed to intercept sand zone impacted by NAPL identified in boring log for MW08B at 27 to 29 ft bgs.